101

FILED

JUL 16 2008

OFFICE OF THE CLERK
SUPREME COURT U.S.

Nos. 07-1059 and 07-1078

In the Supreme Court of the United States

UNITED STATES OF AMERICA

v.

EURODIF S.A., ET AL.

USEC, INC., ET AL., PETITIONERS

v.

EURODIF S.A., ET AL.

ON WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

JOINT APPENDIX

GREGORY G. GARRE
Acting Solicitor General
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

Counsel of Record
for Petitioner United States of America

SHELDON E. HOCHBERG
Steptoe & Johnson LLP
1330 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 429-6218

Counsel of Record
for Petitioners USEC Inc. and United States Enrichment Corporation

CAITLIN J. HALLIGAN
Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
(212) 310-8535

Counsel of Record
for Respondents Eurodif, S.A., AREVA NC, and AREVA NC, Inc.

NANCY A. FISCHER
Pillsbury Winthrop Shaw Pittman LLP
2300 N Street, N.W.
Washington, D.C. 20037
(202) 663-8965

Counsel of Record for
Respondent Ad Hoc Utilities Group

PETITIONS FOR A WRITS OF CERTIORARI FILED: FEB. 15, 2008
CERTIORARI GRANTED: APR. 21, 2008

TABLE OF CONTENTS

Page

Court of appeals docket sheet (Nos. 2007-1005 and -1006) 1
Court of appeals docket sheet (Nos. 04-1209 and 04-1210) 3
Court of International Trade docket sheet 8
Petition for the Imposition of Antidumping and Countervailing Duties (Dec. 7. 2000) 38
Exhibits:
- Energy Information Administration Uranium Industry Annual Survey 1998 45
- Energy Information Administration Uranium Industry Annual Survey 1999 48
- USEC Annual Report, 2000 51
- USEC Prospectus, 1998 61

Ad Hoc Utilities Group (AHUG) Information and Comments on the Issue of Industry Support (Dec. 19, 2000) 101
Respondents' Information and Comments on the Issue of Support (Dec. 20, 2000) 112
Exhibits:
- Motion for Summary Judgment, *Barseback Kraft AB* v. *United States* 123
- USEC Property Tax Letter 126

Respondents' Information and Comments on the Issue of Industry Support (Dec. 26, 2000) 131
Exhibit: Letter from USEC to Secretary Daley (Dec. 8, 1997) 133
Response of USEC et al. (Dec. 27, 2000) 142
Appendices:
- Letter from Richard O. Kingdon to Secretary Daley (Apr. 8, 1998) 144

Table of Contents—Continued: Page

Rebuttal of USEC Inc., *Uranium from the Russian Federation* 156
Department of Commerce, Memorandum on the Issue of Industry Support (Dec. 27, 2000) 161
AHUG Response to Petitioners' Comments on Scope (Apr. 5, 2001) 169
Exhibits:
Provisional Central Product Classification 184
Services Sectoral Classifications List 196
World Trade Organization Energy Services and Trade Negotiations 207
USEC Inc. Response to AHUG's Letter of Apr. 5, 2001 (Apr. 11, 2001) 220
Exhibit: Central Product Classification 222
Department of Commerce Memorandum on Scope of the Investigation (May 7, 2001) 225
Department of Commerce Preliminary Antidumping Duty Determination (July 13, 2001) 238
AHUG Common Issues Brief (Oct. 22, 2001) 260
Department of Commerce Hearing Transcript (Oct. 31, 2001) 277
Letter from Grant Aldonas to EC Directorate-General for Trade (Nov. 7, 2001) 285
International Trade Commission Determination (Feb. 2002) 296
Response of AHUG to Commerce's Remand Determination 299
Comments on Remand Redetermination 301

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Nos. 2007-1005 and -1006

EURODIF, S.A., COMPAGNIE GENERAL DES MATIERES NUCLEAIRES, AND COGEMA, INC., PLAINTIFFS-APPELLEES, AND AD HOC UTILITIES GROUP, PLAINTIFF-APPELLEE

v.

UNITED STATES DEFENDANT-APPELLANT, AND USEC INC. AND UNITED STATES ENRICHMENT CORPORATION, DEFENDANTS-APPELLANTS

DOCKET ENTRIES

DATE	PROCEEDINGS
2/2/2007	Appellant Principal Brief Filing Date
	* * * * *
3/19/2007	Appellee or Cross Appellant Principal Brief Filing Date
	* * * * *
4/5/2007	Appellant Reply Brief Filing Date / / Cross Appellant Reply Brief Filing Date
	* * * * *

DATE	PROCEEDINGS
4/12/2007	Appendix Filing Date
	* * * * *
7/11/2007	Oral Argument Date/Calendared
	* * * * *
9/21/2007	Disposition: Dismissed; by Panel
	* * * * *
11/13/2007	Mandated on

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Nos. 04-1209 and 04-1210

EURODIF S.A., COMPAGNIE GENERALE DES MATIERES NUCLEAIRES, AND COGEMA, INC., PLAINTIFFS-APPELLANTS, AND AD HOC UTILITIES GROUP, PLAINTIFF-APPELLANT

v.

UNITED STATES, DEFENDANT-CROSS APPELLANT, AND USEC INC., AND UNITED STATES ENRICHMENT CORPORATION, DEFENDANTS-CROSS APPELLANTS

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
2/3/2004	2	FORMERLY MISC. NO. 752 (CONSOLIDATED WITH MISC. NO. 753).
2/3/2004	3	NOTICE TO THE USCIT: PETITIONS FOR PERMISSION TO APPEAL WERE GRANTED ON 2/2/04. PLEASE TRANSMIT A CERTIFIED COPY OF THE DOCKET ENTRIES, THE APPEAL INFORMA-

DATE	DOCKET NUMBER	PROCEEDINGS
		TION SHEET, AND PROOF OF PAYMENT OF FILING FEES. SERVICE: by Mail on 2/3/2004
2/13/2004	4	CERTIFICATE OF INTEREST FOR THE APPELLANT(S), AD HOC UTILITIES GROUP. FILED (02/13/04)
2/13/2004	5	CERTIFICATE OF INTEREST FOR THE APPELLANT(S), COGEMA, INC, EURODIF S.A. FILED (02/13/04).
2/23/2004	6	CERTIFIED LISTS FOR 02-00219 AND 02-00221 RECEIVED FROM THE U.S.C.I.T. PURSUANT TO FCR 5(B).
2/23/2004	7	NOTE TO FILE: THE DUE DATE FOR APPELLANTS' BRIEFS IS RECALCULATED FROM THE DATE OF FILING OF THE CERTIFIED LIST. THE APPELLANTS' BRIEFS ARE DUE 4/23/04.

* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
3/2/2004	12	INTERVENOR'S LTR TO COURT CONFIRMING DUE DATE OF THEIR REPLY TO RESPONSES FILED BY OTHER PARTIES. (NOTED). SERVICE : by Hand on 3/2/2004
		* * * * *
3/12/2004	15	REPLY ON BEHALF OF URENCO, ET AL TO RESPONSES TO MOTION FOR LEAVE TO INTERVENE. (SENT TO SSA) . SERVICE: by Mail on 3/12/2004
		* * * * *
5/18/2004	25	REPLY ON BEHALF OF URENCO NEDERLAND B.V., ET AL TO RESPONSES TO MOTION FOR LEAVE TO FILE A BRIEF AS AMICI CURIAE. (SENT TO SSA). SERVICE: by Mail on 5/18/2004

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
3/18/2005	35	NOTICE OF ERRATA FOR THE MARCH 3, 2005 PRECEDENTIAL OPINION.
		* * * * *
6/28/2005	52	CROSS-APPELLANTS' (U.S.E.C.) CITATION PURSUANT TO FED. CIR. R. 28(J). (CIRCULATED)
6/30/2005	52	EURODIF S.A.'S RESPONSE. SERVICE: by Mail on 6/28/2005
6/29/2005	53	CROSS-APPELLANT'S (U.S.) CITATION PURSUANT TO FED. CIR. R. 28(J). (CIRCULATED). SERVICE: by Mail on 6/29/2005
9/9/2005	54	PRECEDENTIAL ORDER: THIS ORDER CONSTITUTES THE PANEL'S ACTION IN RESPONSE TO THE PETITIONS FOR REHEARING. BY: MERITS

DATE	DOCKET NUMBER	PROCEEDINGS
		PANEL. JUDGE PROST. SERVICE: by Mail on 9/9/2005

UNITED STATES COURT OF
INTERNATIONAL TRADE

No. 02-219

USEC INC. AND UNITED STATES ENRICHMENT CORPORATION, PLAINTIFFS

v.

UNITED STATES, DEFENDANT

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
03/14/2002	1	Summons. Filed by Stuart Morton Rosen of Weil, Gotshal & Manges, LLP on behalf of all plaintiffs. Filing fee collected, receipt # w/finance. (Addison, Valerie) (Entered: 03/29/2002)
	* * * * *	
04/15/2002	8	Complaint against United States. Filed by Stuart Morton Rosen of Weil, Gotshal & Manges, LLP on behalf of Cogema, Inc., Compagnie

DATE	DOCKET NUMBER	PROCEEDINGS
		Generale Des Matieres Nucleaires, Eurodif S.A..(Ricci, Rebecca) (Entered: 04/18/2002)
		* * * * *
05/22/2002	26	Order signed on 5/22/2002 granting Motion to intervene. ORDERED: Eurodif, et al is granted Deft-Intvr status (Related Doc # 17). (Warner, Scott) (Entered: 05/22/2002)
		* * * * *
05/22/2002	27	Order signed on 5/22/2002 granting Motion to intervene. ORDERED: United States Enrichment Corp & USEC Inc are granted Deft-Intvr status (Related Doc # 12). (Warner, Scott) (Entered: 05/22/2002)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
06/14/2002	30	Consent Motion for preliminary injunction. Filed by Stuart Morton Rosen of Weil, Gotshal & Manges, LLP on behalf of Cogema, Inc., Compagnie Generale Des Matieres Nucleaires, Eurodif S.A..(Warner, Scott) (Entered: 06/18/2002)
		* * * * *
06/25/2002	32	Order signed on 6/25/2002 granting Motion for preliminary injunction (Related Doc # 30). (Warner, Scott) (Entered: 06/25/2002)
		* * * * *
07/29/2002	37	Confidential and Public Administrative record for DOC filed *w/02-00234*. (Warner, Scott) (Entered: 08/06/2002)
		* * * * *
	43	Motion for judgment on agency record 56.2 *w/02-112*. Response to Dispositive Mo-

DATE	DOCKET NUMBER	PROCEEDINGS
		tion due by 11/26/2002. Filed by Nancy A. Fischer of Shaw Pittman LLP on behalf of Ad Hoc Utilities Group.(Warner, Scott) (Entered: 10/11/2002)
		* * * * *
09/27/2002	44	Confidential Motion for judgment on agency record 56.2 *w/02-112*. Response to Dispositive Motion due by 11/26/2002. Filed by David E. Birenbaum of Fried Frank Harris Shriver & Jacobson, Stuart Morton Rosen of Weil, Gotshal & Manges, LLP on behalf of Urenco, Inc., Urenco Nederland B.V., Urenco Limited, Urenco Deutschland GMBH, Urenco Capenhurst Ltd., Cogema, Inc., Compagnie Generale Des Matieres Nucleaires, Eurodif S.A..(Warner, Scott) (Entered: 10/11/2002)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
10/01/2002	45	Confidential Motion for judgment on agency record 56.2 *(Corrected) w/02-112*. Response to Dispositive Motion due by 11/26/2002. Filed by David E. Birenbaum of Fried Frank Harris Shriver & Jacobson, Stuart Morton Rosen of Weil, Gotshal & Manges, LLP on behalf of Cogema, Inc., Compagnie Generale Des Matieres Nucleaires, Eurodif S.A., Urenco Capenhurst Ltd., Urenco Deutschland GMBH, Urenco Limited, Urenco Nederland B.V., Urenco, Inc..(Warner, Scott) (Entered: 10/11/2002)
		* * * * *
10/09/2002	49	Confidential Motion for judgment on agency record 56.2. Response to Dispositive Motion due by 12/11/2002. Filed by Stuart Morton Rosen of Weil, Gotshal & Manges, LLP on behalf of Cogema, Inc., Compagnie Generale Des Matieres Nucleaires,

DATE	DOCKET NUMBER	PROCEEDINGS
		Eurodif S.A..(Warner, Scott) (Entered: 10/16/2002)
10/10/2002	50	Confidential Motion for judgment on agency record 56.2. Response to Dispositive Motion due by 12/11/2002. Filed by Eric C. Emerson of Steptoe & Johnson, LLP on behalf of USEC Inc. (Warner, Scott) (Entered: 10/16/2002)
		* * * * *
10/15/2002	51	Motion for judgment on agency record 56.2. Response to Dispositive Motion due by 12/11/2002. Filed by Stuart Morton Rosen of Weil, Gotshal & Manges, LLP on behalf of Cogema, Inc., Compagnie Generale Des Matieres Nucleaires, Eurodif S.A..(Warner, Scott) (Entered: 10/17/2002)
10/15/2002	52	Confidential Motion for judgment on agency record 56.2 *(Corrected Version)*. Re-

DATE	DOCKET NUMBER	PROCEEDINGS
		sponse to Dispositive Motion due by 12/11/2002. Filed by Stuart Morton Rosen of Weil, Gotshal & Manges, LLP on behalf of Cogema, Inc., Compagnie Generale Des Matieres Nucleaires, Eurodif S.A..(Warner, Scott) (Entered: 10/17/2002)
10/15/2002	54	Confidential Motion for judgment on agency record 56.2 *(Corrected Version)*. Response to Dispositive Motion due by 12/11/2002. Filed by Eric C. Emerson of Steptoe & Johnson, LLP on behalf of USEC Inc., United States Enrichment Corp.. (Warner, Scott) (Entered: 10/22/2002)
10/15/2002	53	Motion for judgment on agency record 56.2. Response to Dispositive Motion due by 12/11/2002. Filed by Eric C. Emerson of Steptoe & Johnson, LLP on behalf of USEC Inc., United States Enrichment Corp.. (Fong, Sam) (Entered: 10/29/2002)

* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
11/26/2002	58	Response *in opposition* to motion *56.2 by Eurodif, Cogema, and Urenco. w/02-112* (related to motions(s) 46). Replies due by 12/23/2002. Filed by Lucius B. Lau of U.S. Department of Justice on behalf of United States. (Warner, Scott) (Entered: 12/03/2002)
11/26/2002	59	* * * * *
11/26/2002	60	Response *in opposition* to motion *56.2 by Cogema/Urenco and Ad Hoc. w/02-112* (related to motions(s) 46 & 43). Replies due by 12/23/2002. Filed by Sheldon E. Hochberg of Steptoe & Johnson, LLP on behalf of USEC Inc., United States Enrichment Corp.. (Warner, Scott) (Entered: 12/03/2002)
11/26/2002	61	Response *in opposition* to motion *56.2 by Cogema/Urenco and Ad Hoc. w/02-112* (related to motions(s) 44 &

DATE	DOCKET NUMBER	PROCEEDINGS
		43). Replies due by 12/23/2002. Filed by Sheldon E. Hochberg of Steptoe & Johnson, LLP on behalf of USEC Inc., United States Enrichment Corp.. (Warner, Scott) (Entered: 12/03/2002)
		* * * * *
11/26/2002	63	Response *in opposition* to motion *56.2 by Ad Hoc. w/02-112* (related to motions(s) 43). Replies due by 12/23/2002. Filed by Lucius B. Lau of U.S. Department of Justice on behalf of United States. (Warner, Scott) (Entered: 12/06/2002)
		* * * * *
12/11/2002	65	Response *in opposition* to motion *56.2 by Cogema/ Eurodif & USEC* (related to motions(s) 53 , 51). Replies due by 1/9/2003. Filed by Stephen C. Tosini of U.S. Department of Justice on

DATE	DOCKET NUMBER	PROCEEDINGS
		behalf of United States. (Warner, Scott) (Entered: 12/17/2002)
12/11/2002	66	Response *in opposition* to motion *56.2 by Cogema/ Eurodif & USEC (Confidential)* (related to motions(s) 49, 50). Replies due by 1/9/2003. Filed by Stephen C. Tosini of U.S. Department of Justice on behalf of United States.(Warner, Scott) (Entered: 12/17/2002)
12/11/2002	68	Response *in opposition* to motion *56.2 by Cogema/ Eurodif (Confidential)* (related to motions(s) 49). Replies due by 1/9/2003. Filed by Eric C. Emerson of Steptoe & Johnson, LLP on behalf of USEC Inc., United States Enrichment Corp.. (Warner, Scott) (Entered: 12/17/2002)
12/11/2002	70	Response *in opposition* to motion *56.2 by USEC (Confidential)* (related to motions(s) 50). Replies due by 1/9/2003. Filed by Stuart Morton Rosen of Weil,

DATE	DOCKET NUMBER	PROCEEDINGS
		Gotshal & Manges, LLP on behalf of Cogema, Inc., Compagnie Generale Des Matieres Nucleaires, Eurodif S.A. (Warner, Scott) (Entered: 12/17/2002)
		* * * * *
12/13/2002	67	Response *in opposition* to motion *56.2 by Cogema/ Eurodif* (related to motions(s) 51). Replies due by 1/9/2003. Filed by Eric C. Emerson of Steptoe & Johnson, LLP on behalf of USEC Inc., United States Enrichment Corp.. (Warner, Scott) (Entered: 12/17/2002)
12/13/2002	69	Response *in opposition* to motion *56.2 by USEC.* (related to motions(s) 50). Replies due by 1/9/2003. Filed by Stuart Morton Rosen of Weil, Gotshal & Manges, LLP on behalf of Cogema, Inc., Compagnie Generale Des Matieres Nucleaires, Eurodif S.A..(Warner, Scott) (Entered: 12/17/2002)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
12/23/2002	71	Reply *w/02-112* (related to motions(s) 46). Filed by David E. Birenbaum, Stuart Morton Rosen of Fried Frank Harris Shriver & Jacobson on behalf of Cogema, Inc., Compagnie Generale Des Matieres Nucleaires, Eurodif S.A., Urenco Capenhurst Ltd., Urenco Deutschland GMBH, Urenco Limited, Urenco Nederland B.V., Urenco, Inc..(Warner, Scott) (Entered: 01/02/2003)
12/23/2002	72	Reply *w/02-112* (related to motions(s) 43). Filed by Nancy A. Fischer of Shaw Pittman LLP on behalf of Ad Hoc Utilities Group.(Warner, Scott) (Entered: 01/02/2003)
		* * * * *
01/09/2003	73	Confidential Reply *brief* (related to motions(s) 50). Filed by Eric C. Emerson of Steptoe & Johnson, LLP on be-

DATE	DOCKET NUMBER	PROCEEDINGS
		half of USEC Inc., United States Enrichment Corp.. (Warner, Scott) (Entered: 01/13/2003)
01/09/2003	74	Confidential Reply *brief* (related to motions(s) 49). Filed by Stuart Morton Rosen of Weil, Gotshal & Manges, LLP on behalf of Cogema, Inc., Compagnie Generale Des Matieres Nucleaires, Eurodif S.A..(Warner, Scott) (Entered: 01/13/2003)
		* * * * *
01/13/2003	75	Reply *brief* (related to motions(s) 53). Filed by Eric C. Emerson of Steptoe & Johnson, LLP on behalf of USEC Inc., United States Enrichment Corp.. (Warner, Scott) (Entered: 01/17/2003)
01/13/2003	76	Reply *brief* (related to motions(s) 51). Filed by Stuart Morton Rosen of Weil, Gotshal & Manges, LLP on behalf of Cogema, Inc., Compagnie Generale Des Matieres Nucleaires, Eurodif

DATE	DOCKET NUMBER	PROCEEDINGS
		S.A..(Warner, Scott) (Entered: 01/17/2003)
01/13/2003	77	Joint Appendix *(Confidential) w/02-112*. Filed by David E. Birenbaum of Fried Frank Harris Shriver & Jacobson, Stuart Morton Rosen of Weil, Gotshal & Manges, LLP on behalf of Cogema, Inc., Compagnie Generale Des Matieres Nucleaires, Eurodif S.A., Urenco Capenhurst Ltd., Urenco Deutschland GMBH, Urenco Limited, Urenco Nederland B.V., Urenco, Inc.. (Warner, Scott) (Entered: 01/17/2003)
		* * * * *
01/17/2003	78	Joint Appendix *(Confidential)*. Filed by Eric C. Emerson of Steptoe & Johnson, LLP on behalf of USEC Inc., United States Enrichment Corp.. (Warner, Scott) (Entered: 01/22/2003)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
01/24/2003	79	Amended Appendix *(Confidential) w/ 02-112.* Filed by Jay R. Kraemer of Fried Frank Harris Shriver & Jacobson, Stuart Morton Rosen of Weil, Gotshal & Manges, LLP on behalf of Cogema, Inc., Compagnie Generale Des Matieres Nucleaires, Eurodif S.A., Urenco Capenhurst Ltd., Urenco Deutschland GMBH, Urenco Limited, Urenco Nederland B.V., Urenco, Inc.. (Warner, Scott) (Entered: 01/30/2003)
		* * * * *
02/11/2003		Oral Argument held on 2/11/03 at 10:00am in USCIT.. (Warner, Scott) (Entered: 02/25/2003)
		* * * * *
03/25/2003	90	Order signed on 3/25/2003, Slip Op.03-34; Public & Confidential Version Issued. Dept. of Commerce's final determinations vacated as

DATE	DOCKET NUMBER	PROCEEDINGS
		unsupported by substantial evidence on the record and not in accordance with law, and remanded to Commerce for reconsideration. Remand results due 75 days from the date of this decision. Parties may file responses within 20 days thereof. Parties may reply to any responses 7 days thereof. AHUG's motion to intervene is GRANTED. w/02-00112. (related document(s) 41). (Taronji, Steve) (Entered: 03/25/2003)
		* * * * *
04/02/2003	93	Order signed on 4/2/2003 Order: Ad Hoc's motion to intervene is GRANTED. w/02-112. (Warner, Scott) (Entered: 04/02/2003)
		* * * * *
06/23/2003	100	Confidential and Public Remand results filed by DOC *w/02-112*. (Warner, Scott) (Entered: 06/27/2003)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
07/03/2003	102	Confidential Comments on remand results *w/02-112*. Filed by David E. Birenbaum of Fried Frank Harris Shriver & Jacobson, Stuart Morton Rosen of Weil, Gotshal & Manges, LLP on behalf of Cogema, Inc., Compagnie Generale Des Matieres Nucleaires, Eurodif S.A., Urenco Capenhurst Ltd., Urenco Deutschland GMBH, Urenco Limited, Urenco Nederland B.V., Urenco, Inc.. (Warner, Scott) (Entered: 07/09/2003)
07/03/2003	103	Confidential Comments on remand results *w/02-112*. Filed by Nancy A. Fischer of Shaw Pittman LLP on behalf of Ad Hoc Utilities Group. (Warner, Scott) (Entered: 07/09/2003)
07/03/2003	104	Confidential Comments on remand results *w/02-112*. Filed by Eric C. Emerson of Steptoe & Johnson, LLP on

DATE	DOCKET NUMBER	PROCEEDINGS
		behalf of USEC Inc., United States Enrichment Corp.. (Warner, Scott) (Entered: 07/09/2003)
		* * * * *
07/07/2003	106	Comments on remand results *w/02-112*. Filed by David E. Birenbaum of Fried Frank Harris Shriver & Jacobson, Stuart Morton Rosen of Weil, Gotshal & Manges, LLP on behalf of Cogema, Inc., Compagnie Generale Des Matieres Nucleaires, Eurodif S.A., Urenco Capenhurst Ltd., Urenco Deutschland GMBH, Urenco Limited, Urenco Nederland B.V., Urenco, Inc.. (Warner, Scott) (Entered: 07/09/2003)
07/07/2003	107	Comments on remand results *w/02-112*. Filed by Eric C. Emerson of Steptoe & Johnson, LLP on behalf of USEC Inc., United States Enrichment Corp.. (Warner, Scott) (Entered: 07/09/2003)

DATE	DOCKET NUMBER	PROCEEDINGS
07/07/2003	108	Comments on remand results *w/02-112*. Filed by Nancy A. Fischer of Shaw Pittman LLP on behalf of Ad Hoc Utilities Group. (Warner, Scott) (Entered: 07/10/2003)
		* * * * *
07/09/2003	109	Confidential Comments on remand results *in reply to respondents and AHUG. W/02-112*. Filed by Eric C. Emerson of Steptoe & Johnson, LLP on behalf of USEC Inc., United States Enrichment Corp.. (Warner, Scott) (Entered: 07/15/2003)
07/09/2003	110	Confidential Comments on remand results *in reply. w/02-112*. Filed by Nancy A. Fischer of Shaw Pittman LLP on behalf of Ad Hoc Utilities Group. (Warner, Scott) (Entered: 07/15/2003)
07/09/2003	111	Confidential Comments on remand results *in reply to USEC. w/02-112*. Filed by David E. Birenbaum of Fried

DATE	DOCKET NUMBER	PROCEEDINGS
		Frank Harris Shriver & Jacobson, Stuart Morton Rosen of Weil, Gotshal & Manges, LLP on behalf of Cogema, Inc., Compagnie Generale Des Matieres Nucleaires, Urenco Capenhurst Ltd., Urenco Deutschland GMBH, Urenco Limited, Urenco Nederland B.V., Urenco, Inc.. (Warner, Scott) (Entered: 07/15/2003)
07/09/2003	112	Comments on remand results *in response to parties comments. w/02-112.* Filed by Stephen Carl Tosini of U.S. Department of Justice on behalf of United States. (Warner, Scott) (Entered: 07/15/2003)
		* * * * *
07/11/2003	113	Comments on remand results *in reply to respondents and AHUG. w/02-112.* Filed by Eric C. Emerson of Steptoe & Johnson, LLP on behalf of USEC Inc., United States Enrichment Corp..

DATE	DOCKET NUMBER	PROCEEDINGS
		(Warner, Scott) (Entered: 07/15/2003)
07/11/2003	114	Comments on remand results *in reply to USEC. w/02-112.* Filed by David E. Birenbaum of Fried Frank Harris Shriver & Jacobson, Stuart Morton Rosen of Weil, Gotshal & Manges, LLP on behalf of Cogema, Inc., Compagnie Generale Des Matieres Nucleaires, Eurodif S.A., Urenco Capenhurst Ltd., Urenco Deutschland GMBH, Urenco Limited, Urenco Nederland B.V., Urenco, Inc.. (Warner, Scott) (Entered: 07/15/2003)
07/11/2003	115	Comments on remand results *in reply. w/02-112.* Filed by Nancy A. Fischer of Shaw Pittman LLP on behalf of Ad Hoc Utilities Group. (Warner, Scott) (Entered: 07/15/2003)

* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
07/16/2003	117	Joint Appendix *(Confidential) for their comments on DOC's remand determination. w/02-112.* Filed by David E. Birenbaum of Fried Frank Harris Shriver & Jacobson, Nancy A. Fischer of Shaw Pittman LLP, Stuart Morton Rosen of Weil, Gotshal & Manges, LLP on behalf of Ad Hoc Utilities Group, Cogema, Inc., Compagnie Generale Des Matieres Nucleaires, Eurodif S.A., Urenco Capenhurst Ltd., Urenco Deutschland GMBH, Urenco Limited, Urenco Nederland B.V., Urenco, Inc.. (Warner, Scott) (Entered: 07/18/2003)
		* * * * *
08/01/2003	118	Confidential and Public Administrative record for DOC filed *w/02-112.* (Warner, Scott) (Entered: 08/08/2003)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
09/16/2003	119	Order signed on 9/16/2003 Slip Op. 03-121: Commerce's remand determination reversed in part and affirmed in part. The parties are ordered to consult with each other and with the Clerk of the Court and to file a revised scheduling order within 60 days of the date of entry of this opinion. w/02-112. (Warner, Scott) (Entered: 09/16/2003)
		* * * * *
12/02/2003	127	Motion for certification of appealability *w/schedule*. Responses due by 12/16/2003. Filed by Sheldon E. Hochberg of Steptoe & Johnson, LLP, Nancy A. Fischer of Shaw Pittman LLP, Stuart Morton Rosen of Weil, Gotshal & Manges, LLP on behalf of Ad Hoc Utilities Group, Cogema, Inc., Compagnie Generale Des Matieres Nucleaires, Eurodif

DATE	DOCKET NUMBER	PROCEEDINGS
		S.A., USEC Inc., United States Enrichment Corp.. (Warner, Scott) (Entered: 12/03/2003)
12/02/2003	128	Motion for a statement *pursuant to 28 USC 1292(d)(1).* Responses due by 12/16/2003. Filed by Stephen Carl Tosini of U.S. Department of Justice on behalf of United States. (Warner, Scott) (Entered: 12/05/2003)
		* * * * * * *
12/22/2003	135	Order signed on 12/22/2003, Slip Op. 03-170; ORDERED: that the Court finds, pursuant to 28 USC 1292(d), that the Court's decision on the four issues stated above involve controlling questions on the law with respect to which there is a substantial ground for difference of opinion and that an immediate appeal from the Court's decision may materially advance the ultimate termina-

DATE	DOCKET NUMBER	PROCEEDINGS
		tion of this litigation. ORDERED: that 28 USC 1292(d) hereby permits appeal of these issues. (Taronji, Steve). (Entered: 12/23/2003)
		* * * * *
01/16/2004	137	*Deft's* Appeal of *issues cited in Slip Op 03-170* docketed on 1/12/2004 by the CAFC as appeal no. Misc. No. 753. (Warner, Scott) (Entered: 01/16/2004)
01/16/2004	138	*Eurodif, Compagnie, Cogema, USEC Inc., USEC, and AHUG* Appeal of *issues cited in Slip Op 03-170* docketed on 1/12/2004 by the CAFC as appeal no. Misc. No. 752. (Warner, Scott) (Entered: 01/16/2004)
		* * * * *
02/05/2004	140	*Eurodif, Compagnie, Cogema, USEC Inc., USEC, AHUG and Deft's* Appeal of

DATE	DOCKET NUMBER	PROCEEDINGS
		issues cited in Slip Op 03-170 docketed on 2/3/2004 by the CAFC as appeal no. 04-1209, -1210(previously docketed as Misc. No. 752 and Misc. No. 753). w/schedule (Warner, Scott) (Entered: 02/06/2004)
		* * * * *
03/07/2005	147	CAFC decision in appeal # *04-1209, -1210*. Decision: *Affirmed-in-part and Reversed-in-part* (related document(s) 143 , 137 , 138 , 140 , 141, 142). (Warner, Scott) (Entered: 03/08/2005)
		* * * * *
09/19/2005	153	CAFC mandate in appeal # *04-1209, -1210*. Mandate issued on *9/16/2005* (related document(s) 148 , 147). (Warner, Scott) (Entered: 09/20/2005)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
01/05/2006	177	Order entered on 1/5/2006, Slip Op. 06-2; ORDERED: that this action is remanded to Commerce. Commerce shall file its remand results and serve the parties with the same, by 3/3/2006. Parties may file and serve responses by 3/17/2006 thereafter. Parties may file and serve a reply to any responses by 3/31/2006. ORDERED: that all other actions in Consolidated Court No. 02-00219 before this Court are stayed pending further notice from the Court. (Related Doc # 157) (Taronji, Steve). (Entered: 01/05/2006)
		* * * * *
03/03/2006	178	Remand results filed by U.S. Department of Commerce. Filed by Marisa Beth Goldstein of U.S. Department of Commerce on behalf of United States. (Attachments: #

DATE	DOCKET NUMBER	PROCEEDINGS
		1 Public Remand Results) (Goldstein, Marisa) (Entered: 03/03/2006)
		* * * * *
05/02/2006	191	Confidential and Public Administrative record for DOC filed. (Attachments: # 1 Docs 1-2# 2 Doc 3# 3 Docs 4-5# 4 Doc 6# 5 Docs 7-15# 6 Doc 16# 7 Doc 17# 8 Doc 18) (Warner, Scott) (Entered: 05/08/2006)
		* * * * *
05/18/2006	196	Order entered on 5/18/2006, Slip Op. 06-75; Pltf's motion for remand is Granted. Deft-Intervenor's motion is Denied. Commerce shall have until 6/19/2006 to provide a remand determination. Parties shall submit comments on Commerce's remand determination no later than 6/26/2006 and rebuttal comments no later than 7/7/2006.

DATE	DOCKET NUMBER	PROCEEDINGS
		(related document(s) 157). (Taronji, Steve) (Entered: 05/18/2006)
		* * * * *
06/19/2006	197	Public Remand results filed by Department of Commerce. Filed by Quentin Michael Baird of U.S. Department of Commerce on behalf of United States. (Attachments: # 1)(Baird, Quentin) (Entered: 06/19/2006)
		* * * * *
07/11/2006	208	Administrative record for DOC filed *(cover letter & index)*. (Attachments: # 1 Docs 1-3# 2 Doc 4# 3 Docs 5-6) (Warner, Scott) (Entered: 07/14/2006)
		* * * * *
08/03/2006	213	Order entered on 8/3/2006, Slip Op. 06-124. Judgment Order issued. ORDERED:

DATE	DOCKET NUMBER	PROCEEDINGS
		that the Department of Commerce's remand determination is sustained. (related document(s) 197) .(Goell, Geoffrey) (Entered: 08/03/2006)
		* * * * *
09/18/2006	216	Notice of appeal of Slip Op. 06-124 filed. $455.00 filing fee paid.(related document(s) 213 , 213). Filed by Eric C. Emerson of Steptoe & Johnson, LLP on behalf of United States Enrichment Corp., USEC Inc.. (Warner, Scott) (Entered: 09/25/2006)
		* * * * *
09/28/2006	218	Notice of appeal of Slip Op. 06-124 filed. (related document(s) 213). Filed by Stephen Carl Tosini of U.S. Department of Justice on behalf of United States.(Warner, Scott) (Entered: 10/02/2006)
		* * * * *

STEPTOE & JOHNSON LLP

ATTORNEYS AT LAW

1330 Connecticut Avenue, NW
Washington, DC 20036-1795

Telephone 202-429-3000
Facsimile 202-429-3902
www.steptoe.com

Richard O. Cunningham
202-429-6434

BUSINESS PROPRIETARY VERSION

Investigation Nos.: A-427-818, C-427-819, A-412-820, C-412-821, A-428-828, C-428-829, A-421-808, C-421-809 and 731-TA.___

* * * * *

Document may be released under APO

December 7, 2000

VIA HAND DELIVERY

The Honorable Norman Y. Mineta
Secretary of Commerce
Attn: Import Administration
U.S. Department of Commerce, Room 1870
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

The Honorable Donna R. Koehnke
Secretary
U.S. International Trade Commission
500 E Street, S.W.
Washington, DC 20436

Re: Petition for the Imposition of Antidumping And Countervailing Duties On Low Enriched Uranium From France, Germany, the Netherlands and the United Kingdom

Dear Secretary Mineta and Secretary Koehnke:

On behalf of USEC Inc., and it's [*sic*] wholly owned subsidiary United States Enrichment Corporation, domestic producers of low enriched uranium, ("Petitioner"), we hereby submit the * * *.

* * * * *

3. General Description of the Merchandise

   a. Physical Characteristics & Identification of Domestic Like Product (19 C.F.R. § 207.11(b)(2)(i))

The subject merchandise is LEU, as defined in Section I.E.1, *supra*. The domestic like product is also LEU, which is identical to the subject merchandise in terms of its physical characteristics and uses. The domestic like product and the subject merchandise are chemically and physically identical and have the same use, namely, as fuel for the production of electric power in nuclear reactors. As noted above in Section I.C., *supra*. Petitioner is the only domestic producer of LEU.

b. Manufacturing Process

LEU is the result of three distinct stages of production—mining, conversion and enrichment—each of which requires specialized equipment, workers and technology.

The first stage is mining. Conventional mining involves the extraction of uranium from open-pit and underground mines. After the uranium is extracted, it is "milled," a term which comprises the entire mechanical and chemical process from the crushing and grinding of the ore to the precipitation of marketable uranium concentrate. Unconventional uranium mining includes techniques such as in-situ leaching, in which uranium is extracted from base materials through the use of chemical reactants. The end-product of conventional and unconventional mining operations is uranium concentrate, a chemically stable uranium oxide which is usually stored and shipped in 55-gallon steel drums. The chemical content of uranium concentrate varies, but is typically at least 75 percent U_3O_8, and is usually expressed in terms of U_3O_8 equivalent. The product resulting from this stage of production is referred to herein as "natural uranium."

The second stage is conversion, through which uranium concentrates are converted into uranium hexafluoride (UF_6). Conversion is accomplished through the addition of heat and chemical reactants, including flourine [*sic*], to the uranium concentrate to produce UF_6. The resulting UF_6 is stored and shipped in heavy walled steel cylinders because of its highly chemically reactive nature. The product resulting from this stage of production is referred to herein as "converted uranium."

The third stage is enrichment, the process by which the U^{235} isotope in converted uranium is increased to a desired level.[5] As found in nature, uranium consists of three isotopes, the two principal ones being uranium-235 (U^{235}) and uranium-238 (U^{238}). U^{238} is more abundant but is not fissionable. U^{235} is the fissionable isotope, but its concentration in natural uranium is only 0.711 percent by weight. Most nuclear utilities operating in the world today require LEU fuel with a U^{235} concentration (a "product assay") in the range of 3 to 5 percent by weight.[6]

In a plant based on either of the two commercially established enrichment technologies (described below), the enricher will increase the U^{235} isotope to this desired assay. The amount of isotope separation assumed to be embodied in a given quantity of LEU is expressed in units called "separative work units," or SWU.[7] The amount of SWU deemed to be contained in a given quantity of LEU depends not only on the product assay requested by the utility, but also on the "tails assay" (*i.e.*,

---

[5] Depleted uranium (*i.e.*, uranium with an assay of less than 0.711) may also be used as feedstock for production of LEU. LEU produced from depleted uranium (or any other form of uranium) is within the scope of this petition.

[6] HEU, with a U^{235} content greater than 20 percent, has primarily military or research applications.

[7] For reasons stated in the attached memorandum, this quantity of SWU is calculated using a mathematical formula derived from the physics of enrichment that is applied regardless of the technology used. The amount of SWU as calculated in connection with any contract does not necessarily represent the actual amount of separative effort expended by the enricher to produce the LEU. The actual effort (or amount of SWU applied) will be a function of the tails assay of the depleted uranium produced as well as the quantity and assay of the LEU. By industry convention, the phrase "MTSWU" means "thousand SWU."

the percentage of U^{235} assumed to remain in the depleted UF_6 after enrichment is complete). Both of these assays are usually stipulated in the contract or purchase order between the enricher and the utility. The product resulting from this stage of production is referred to herein as "low enriched uranium" or "LEU," and constitutes the merchandise subject to this petition.

There are two principal methods of uranium enrichment: gaseous diffusion enrichment and gas centrifuge enrichment.[8] Gaseous diffusion—which until about 1975 was the only Western enrichment technology developed on a commercial scale—involves the passage of UF_6 in a gaseous form through a series of barriers containing millions of microscopic holes. Because U^{235} is lighter than U^{238}, the U^{235} passes through the barriers more readily than the U^{238}, resulting in uranium in a gaseous form that is enriched in U^{235} above the normal concentration. Because a single pass of the UF_6 through these barriers has only a slight impact on the U^{235} concentration, the UF_6 is sent through hundreds and thousands of barriers, or "cascades" until the desired assay is reached. The gas centrifuge method of enrichment employs rapidly spinning cylinders containing UF_6 under high pressure to separate the U^{235} (which, being a lighter isotope, moves at a greater velocity in the centrifuge) from the U^{238}. Regardless of the technology used, the enriched UF_6 that results from either process is chemically and functionally identical.

In terms of relative value, Petitioner estimates that in a given quantity of LEU, natural uranium accounts for 35 percent of total value, conversion accounts for 5

---

[8] LEU can also be produced by downblending HEU.

percent, and enrichment accounts for the remaining 60 percent.[9]

4. Uses

The principal use of LEU is for the generation of electricity. LEU is purchased by U.S. utilities (in the manner discussed in Section I.E.5., *infra*) for fabrication and manufacture into fuel assemblies, which are used as fuel for nuclear reactors in the production of electricity. LEU can also be used in certain medical and research fields.

This petition covers all LEU regardless of end use.

5. Market Characteristics[10]

U.S. utilities can purchase LEU from an enricher entirely for cash, or by paying cash for the SWU deemed to be contained in the LEU and providing the enricher with a quantity of converted uranium as compensation for the quantity of converted uranium deemed to be contained in the LEU.

* * * * *

8. Price

LEU is priced separately from all other products and is traded as a unique item. LEU is either priced on a per kilogram basis (when purchased through an all cash transaction) *or* on a per SWU basis (when purchased on the basis of a cash payment for the calculated SWU component of the LEU delivered by the enricher and deliv-

---

[9] *Uranium from Kazakhstan*, Inv. No. 731-TA-539-A, USITC Pub. No. 3213 at I-4 to I-5 (July 1999).

[10] The discussion in this section is based on Petitioner's commercial experience as an enricher of uranium.

ery of the calculated converted uranium component, as required by the contract).

F. Name of Home Market Country and the Name of Any Intermediate Countries Through Which the Merchandise is Transshipped (19 C.F.R. § 351.202(b)(6))

The LEU subject to this petition is produced in France, Germany, the Netherlands, and the United Kingdom. Petitioner has no reason to believe that the subject merchandise is exported from countries other than from those in which it was produced.

G. Names and Addresses of the Companies Producing the Subject Merchandise (19 C.F.R. §§ 351.202(b)(7)(i)(A) & 351.202(b)(7)(ii)(A))

The following are the names and addresses of the producers of the subject merchandise in each of the countries subject to investigation:

France

Eurodif S.A.
4, rue Paul Dautier, BP 35
F-78140 Velizy-Villacoublay Cedex
France

Energy Information Administration
Uranium Industry Annual Survey 1998

Table 25. U.S. Utility Purchases of Enrichment Services by Origin Country and Delivery Year, 1994-1998
(Thousand Separative Work Units (SWU))

Actual Deliveries	1994	1995	1996	1997	1998
Country where Enrichment Service was performed:					
China	237	0	W	W	W
France	549	867	1,507	734	696
Germany	W	W	W	W	W
Netherlands	W	W	167	0	323
Russia	421	1,108	1,073	1,765	2,364
United Kingdom	W	460	278	119	376
Foreign Total	**1,676**	**2,800**	**3,154**	**2,865**	**4,401**
United States	7,521	6,741	8,004	6,013	5,677
Total	**9,167**	**9,540**	**11,159**	**8,876**	**10,079**

W = Data withheld to avoid disclosure.

Note: Totals may not equal sum of components because of independent rounding.

Source: Energy Information Administration, Form EIA-858, "Uranium Industry Annual Survey" (1994-1998).

Table 26. U.S. Utility Purchases of Enrichment Services by Contract Type in Delivery Year, 1998
(Thousand Separative Work Units (SWU))

Enrichment Service Contract Type	U.S. Enrichment	Foreign Enrichment	Total
Spot	W	W	W
Short-term	W	W	W
Medium-term	1,796	1,089	2,885
Long-term	3,598	3,151	6,748
Total	**5,677**	**4,401**	**10,079**

Note: Totals may not equal sum of components because of independent rounding.

Source: Energy Information Administration, Form EIA-858, "Uranium Industry Annual Survey" (1998).

Table 27. Uranium in Fuel Assemblies Loaded into U.S. Commercial Nuclear Power Reactors by Year, 1994-1998

(Thousand Pounds U_3O_8 Equivalent)

Origin of Uranium	1994	1995	1996	1997	1998[P]
Domestic-Origin Uranium	9,302	11,146	8,820	11,135	7,386
Foreign-Origin Uranium	31,098	39,972	37,330	37,069	30,918
Total	**40,400**	**51,118**	**46,151**	**48,204**	**38,304**

P = Preliminary data. Final 1997 fuel assembly data reported in the 1998 survey.

Notes: Includes only unirradiated uranium in new fuel assemblies loaded into reactors during the year. Does not include uranium removed from reactors *that subsequently will be reloaded. Totals may not equal sum of components because of independent rounding.*

Source: Energy Information Administration, Form EIA-858, "Uranium Industry Annual Survey" (1994-1998).

Table 25. U.S. Utility Purchases of Enrichment Services by Origin Country and Delivery Year, 1995-1999
(Thousand Separative Work Units (SWU))

Actual Deliveries	1995	1996	1997	1998	1999
Country where Enrichment Service was performed:					
China	0	W	W	W	145
France	867	1,507	734	696	822
Germany	W	W	W	W	302
Netherlands	W	167	0	323	245
Russia	1,108	1,073	1,765	2,364	3,424
United Kingdom	460	278	119	376	487
Foreign Total	**2,800**	**3,154**	**2,865**	**4,401**	**5,425**
United States	6,741	8,004	6,013	5,677	4,602
Total	**9,540**	**11,159**	**8,876**	**10,079**	**10,028**

W = Data withheld to avoid disclosure.

Note: Totals may not equal sum of components because of independent rounding.

Source: Energy Information Administration, Form EIA-858, "Uranium Industry Annual Survey" (1995-1999).

Table 26. U.S. Utility Purchases of Enrichment Services by Contract Type in Delivery Year, 1999
(Thousand Separative Work Units (SWU))

Enrichment Service Contract Type	U.S. Enrich-ment	Foreign Enrich-ment	Total
Spot	210	379	588
Short-term	W	W	W
Medium-term	W	W	W
Long-term	3,983	4,240	8,223
Total	**4,602**	**5,425**	**10,028**

W = Data withheld to avoid disclosure.

Note: Totals may not equal sum of components because of independent rounding.

Source: Energy Information Administration, Form EIA-858, "Uranium Industry Annual Survey" (1999).

Table 27. Uranium in Fuel Assemblies Loaded into U.S. Commercial Nuclear Power Reactors by Year, 1995-1999

(Thousand Pounds U_3O_8 Equivalent)

Origin of Uranium	1995	1996	1997	1998	1999[P]
Domestic-Origin Uranium	11,146	8,820	11,135	7,388	10,583
Foreign-Origin Uranium	39,972	37,330	37,069	30,811	48,244
Total	**51,118**	**46,151**	**48,204**	**38,199**	**58,827**

P = Preliminary data. Final 1998 fuel assembly data reported in the 1999 survey.

Notes: Includes only unirradiated uranium in new fuel assemblies loaded into reactors during the year. Does not include uranium removed from reactors that subsequently will be reloaded. Totals may not equal sum of components because of independent rounding.

Source: Energy Information Administration, Form EIA-858, "Uranium Industry Annual Survey" (1996-1999).

[Logo Omitted]
USEC

**MEETING CHALLENGES
SEIZING OPPORTUNITIES**

2000 ANNUAL REPORT

[Illustration Omitted]

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion should be read in conjunction with, and is qualified in its entirety by reference to, the Consolidated Financial Statements and related notes appearing elsewhere in this report.

OVERVIEW

USEC, a global energy company, is the world leader in the sale of uranium fuel enrichment services for commercial nuclear power plants, with approximately 73% of the North American market and approximately 36% of the world market. Uranium enrichment is a critical step in transforming uranium into fuel for nuclear reactors to produce electricity. Based on customers' estimates of their requirements and certain other assumptions, including estimates of inflation rates, at June 30, 2000, USEC had long-term requirements contracts with utilities to provide uranium and uranium enrichment services aggregating $6.1 billion through fiscal 2011 (including $3.3 billion through fiscal 2003), compared with $6.5 billion at June 30, 1999. The standard measure of

effort or service in the uranium enrichment industry is separative work units ("SWU").

Agreements with electric utilities are generally long-term requirements contracts under which customers are obligated to purchase a specified percentage of their requirements for uranium enrichment services. Customers, however, are not obligated to make purchases or payments if they do not have any requirements. There is a trend for contracts with shorter terms that is expected to continue, with the newer contracts generally containing terms in the range of 3 to 7 years. Under power-for-SWU barter contracts, USEC exchanges its enrichment services with utilities that supply electric power to the plants.

Revenue and operating results can fluctuate significantly from quarter to quarter, and in some cases, year to year. Customer requirements are determined by refueling schedules for nuclear reactors, which generally range from 12 to 24 months. These schedules are in turn affected by, among other things, the seasonal nature of electricity demand, reactor maintenance, and reactors beginning or terminating operations. Utilities typically schedule the shutdown of their reactors for refueling to coincide with the low electricity demand periods of spring and fall. Thus, some reactors are scheduled for fall refueling, spring refueling or for 18-month cycles alternating between both seasons. The timing of larger orders for initial core requirements for new nuclear reactors also can affect operating results.

USEC is the Executive Agent of the U.S. Government under a government-to-government agreement ("Russian Contract") to purchase the SWU component of en-

riched uranium recovered from dismantled nuclear weapons from the former Soviet Union for use in commercial electricity production. Cost of sales has been, and will continue to be, adversely affected by amounts paid to purchase SWU under the Russian Contract. Since the volume of Russian SWU purchases has increased, USEC has operated the plants at significantly lower production levels resulting in higher unit production costs. Global market prices for SWU have declined below the price being paid for SWU under the Russian Contract. An underlying principle of the program is for it to operate according to commercial practices. As a result of negotiations to align the Russian Contract with market pricing realities, USEC and its counterparts in Russia have reached an agreement in principle to adopt market-based pricing for SWU in January 2002, subject to approvals from the United States and Russian governments. The timing and conditions, if any, for U.S. government approval are uncertain.

REVENUE

Substantially all of USEC's revenue is derived from the sale of uranium enrichment services, denominated in SWU. Although customers may buy enriched uranium product without supplying uranium, most of USEC's contracts are for enriching uranium provided by customers. Because orders for uranium enrichment services to refuel customer reactors occur once in 12, 18 or 24 months and are large in amount, averaging $13.0 million per order, the percentage of revenue attributable to any customer or group of customers from a particular geographic region can vary significantly quarter-by-quarter or year-by-year. However, customer requirements and orders over the longer term are more predictable.

USEC estimates that about two-thirds of the nuclear reactors under contract operate on refueling cycles of 18 months or less, and the remaining one-third operate on refueling cycles greater than 18 months.

Recent industry and global economic developments have intensified the effects of production over-capacity and continuing lower prices for SWU. These developments include:

- heightened price competition among uranium enrichment suppliers;
- the adverse impact of the strengthening U.S. dollar;
- certain European utilities liquidating strategic SWU inventories; and
- termination of the Kazakhstan suspension agreement.

In addition to excess production capacity, certain suppliers have announced technology-driven plans to expand capacities.

USEC's financial performance overtime can be significantly affected by changes in hte market prices for SWU. As older contracts expire, USEC's backlog is becoming more heavily weighted with newer contracts with shorter terms and lower prices. In light of this, USEC expects its backlog will decline over time unless new SWU commitments are added at sufficient levels to offset the impact of shorter term contracts, expiring commitments and lower prices. USEC anticipates the trend toward lower prices and shorter contract terms will continue, due to increased competition among uranium enrichment suppliers for new SWU commitments. To address this trend, USEC is placing a high priority

on numerous initiatives to further reduce costs and increase its competitiveness.

USEC's contracts are denominated in U.S. dollars, and although revenue is not directly affected by changes in the foreign exchange rate of the U.S. dollar, USEC may have a competitive price disadvantage or advantage obtaining new contracts in a competitive bidding process depending upon the strength or weakness of the U.S. dollar. Costs of the primary competitors are denominated in the major European currencies.

Revenue could be negatively impacted by actions of the Nuclear Regulatory Commission suspending operations at domestic utility customer reactors under contract with USEC. In addition, business decisions by utilities that take into account economic factors, such as the price and availability of alternate fossil fuels, consolidation within the electric power industry, the need for generating capacity and the cost of maintenance, could result in suspended operations or early shutdowns of some reactors under contract with USEC.

COST OF SALES

Cost of sales is based on the quantity of SWU sold during the period and is dependent upon production costs at the plants and purchase costs under the Russian Contract. Production costs consist principally of electric power (representing 50% of production costs in fiscal 2000), labor and benefits, depleted uranium disposition costs, materials, and maintenance and repairs. Under the monthly moving average inventory cost method, an increase or decrease in production or purchase costs will have an effect on costs of sales over future periods.

The plants require substantial amounts of electric power to enrich uranium. In fiscal 2000, USEC acquired most of its electric power from Ohio Valley Electric Corporation ("OVEC"), the main supplier to the Portsmouth plant, and from Electric Energy, Inc. ("EEI"), the main supplier to the Paducah plant, under long-term power purchase contracts between DOE and OVEC and EEI. Under an agreement between USEC and DOE ("Electricity MOA"), DOE is required to transfer the benefits of the power purchase contracts to USEC.

Electric power purchased from OVEC and EEI represented 75% of power purchased in fiscal 2000, with costs based on actual costs incurred by OVEC and EEI. The remainder of the electric power purchased by USEC in fiscal 2000 was market-based power, all of which was used at the Paducah plant. Market-based power costs vary seasonally with rates higher during the winter and summer as a function of the extremity of the weather. USEC substantially reduces production and the related power load at the Paducah plant in the summer months when the cost of market-based power is high. Almost all of the power for the Paducah plant for the summer of 2000 was purchased prior to the summer months at fixed prices based on prevailing market rates.

In July 2000, USEC entered into a 10-year power purchase agreement with Tennessee Valley Authority ("TVA") to provide a substantial portion of electric power for the Paducah plant beginning September 2000. Replacing EEI as primary supplier, TVA will supply electric power for the Paducah plant at fixed rates, thereby substantially reducing USEC's price risk for electric power in the volatile Midwest power market. The agreement provides that amounts to be paid to TVA

for power scheduled to be purchased in fiscal 2001 will be reduced by a deferred payment obligation of $45.0 million. USEC will secure the obligation, as long as it is outstanding, by transferring title to uranium inventories with an equivalent value to TVA. The obligation and related interest will be satisfied by providing SWU to TVA in fiscal years 2002 to 2004 under a requirements contract, the terms of which are not yet final.

USEC accrues estimated costs for the future disposition of depleted uranium generated as a result of its operations. Costs are dependent upon the volume of depleted uranium generated and estimated transportation, conversion and disposal costs. USEC stores depleted uranium at the plants and continues to evaluate various proposals for its disposition.

USEC leases most, but not all, of the buildings and facilities at the plants at favorable terms from DOE. Upon termination of the lease, USEC is responsible for certain lease turnover activities at the plants. Lease turnover costs are accrued over the estimated term of the lease which, for the Paducah plant, is estimated to extend through calendar year 2008.

As Executive Agent under the Russian Contract, USEC ordered 5.5 million SWU in fiscal 2000. However, as a result of shipping delays in Russia, there were 4.8 million SWU delivered and purchased at a cost of $417.8 million, including related shipping charges. Subject to price adjustments for U.S. inflation, USEC has committed to purchase 4.6 million SWU at a cost of $404.7 million in the six months ending December 31, 2000, and expects to purchase 5.5 million SWU at a cost of $494.1 million in calendar year 2001.

* * * * *

Inventories included in current assets represent amounts required to meet working capital needs, preproduce enriched uranium product and balance the uranium and electric power requirements of the plants.

Generally, title to uranium provided by customers for enrichment purposes does not pass to USEC. Uranium provided by customers for which title does pass to USEC is recorded on the balance sheet at estimated fair values of $101.7 million at June 30, 1999 and $40.2 million at June 30, 2000, with corresponding liabilities in the same amounts representing uranium owed to customers. In addition, USEC holds uranium for enrichment and storage purposes with estimated fair values of $829.7 million at June 30, 1999 and $682.2 million at June 30, 2000, for which title is held by customers and others.

Inventories reported as long-term assets include uranium not expected to be used or sold within one year of the balance sheet date and include the SWU and uranium components of 50 metric tons of highly enriched uranium transferred to USEC from DOE in fiscal 1998 and scheduled to be blended down to low enriched uranium over the next five years.

4. PURCHASE OF SEPARATIVE WORK UNITS UNDER RUSSIAN CONTRACT

In January 1994, USEC on behalf of the U.S. Government signed the 20-year Russian Contract with AO Techsnabexport ("Tenex"), the Executive Agent for the Russian Federation, under which USEC purchases SWU derived from up to 500 metric tons of highly enriched uranium recovered from dismantled Soviet nu-

clear weapons. Highly enriched uranium is blended down in Russia and delivered to USEC, F.O.B. St. Petersburg, Russia, for sale and use in commercial nuclear reactors.

Purchases of SWU derived from highly enriched uranium under the Russian Contract, including related shipping charges, in fiscal 1998, 1999 and 2000 follow (in millions):

	SWU	Amount
Fiscal Years Ended June 30,		
1998	3.6	$ 315.8
1999	3.6	319.6
2000	4.8	417.8
	12.0	$1,053.2

Over the life of the Russian Contract, USEC expects to purchase 92 million SWU derived from 500 metric tons of highly enriched uranium, of which 15.8 million SWU had been purchased as of June 30, 2000. Subject to price adjustments for U.S. inflation, USEC has committed to purchase 4.6 million SWU at a cost of $404.7 million in the six months ending December 31, 2000, and expects to purchase 5.5 million SWU at a cost of $494.1 million in calendar year 2001.

BEST AVAILABLE COPY

5. INCOME TAXES

The provision (benefit) for income taxes follows (in millions):

	Fiscal Years Ended June 30,	
	1999	200
Current:		
Federal	$ 5.1	$ (2
State and local	.6	
	5.7	(1
Deferred:		
Federal	40.7	(2
State and local	5.2	
	45.9	(2
Special deferred tax benefit from transition to taxable statu		
Federal	(49.8)	
State and local	(4.7)	-
	(54.5)	-
	$ (2.9)	$ (3

USEC Prospectus
(July 22, 1998)

PROSPECTUS SUMMARY

1. The following summary is qualified in its entirety by, and should be read in conjunction with, the more detailed information and financial statements, including the notes thereto, appearing elsewhere in this Prospectus. Unless otherwise indicated or the context otherwise requires, references in this Prospectus to the "Company" and "USEC" mean, (i) at all times prior to the consummation of the Offering, United States Enrichment Corporation, the federally-chartered entity, and (ii) at all times thereafter, USEC Inc., a Delaware corporation, and its consolidated subsidiaries. References in this Prospectus to "Shares" are to the shares of common stock, par value $.10 per share (the "Common Stock"), of USEC Inc. being offered hereby. Unless the context otherwise requires, all Share data in the Prospectus assume no exercise of the U.S. Underwriters' over-allotment option. As used in this Prospectus, the terms "fiscal" or "fiscal year" refer to the Company's fiscal year which is the twelve-month period ending on June 30 of the designated year. Terms not defined in this Prospectus Summary are defined elsewhere in this Prospectus or in the Glossary.

THE COMPANY

OVERVIEW

USEC, a global energy company, is the world leader in the production and sale of uranium fuel enrichment services for commercial nuclear power plants. USEC cur-

rently has approximately a 75% share of the North American uranium enrichment market and a 40% share of the world market. Uranium enrichment is a critical step in transforming natural uranium into fuel for nuclear reactors to produce electricity. USEC enriches uranium utilizing the gaseous diffusion process at two plants located in Paducah, Kentucky and near Portsmouth, Ohio. USEC's fiscal 1997 revenue and pre-tax income were $1.6 billion and $250.1 million, respectively. The Company's net income on a pro forma basis (primarily to reflect a provision for federal, state and local income taxes and interest expense) for fiscal 1997 was $133.2 million.

The Company supplies enriched uranium to approximately 60 customers for use in 176 nuclear reactors located in 14 countries throughout the world. Generally, the Company's contracts with its customers are "requirements" contracts pursuant to which the customer is obligated to purchase a specified percentage of its enriched uranium requirements from the Company. Consequently, the Company's annual sales are dependent upon the customers' requirements for enrichment services, which are driven by nuclear reactor refueling schedules, reactor maintenance schedules, customers' considerations of costs, and regulatory actions. Based on customers' estimates of their requirements, as of March 31, 1998, the Company had long-term requirements contracts with utilities to provide uranium enrichment services aggregating $3.2 billion through fiscal 2000 and $7.4 billion through fiscal 2009.

The Company began operations on July 1, 1993 (the "Transition Date") when the U.S. Government's uranium enrichment activities were transferred from the

United States Department of Energy ("DOE") to the Company. Since the Transition Date, USEC has adopted a series of private-sector management practices which have enabled it to be more responsive to its customers and to market forces. Applying private sector principles has significantly improved the Company's competitive positioning by: (i) adding $4.3 billion in new contract commitments through fiscal 2009 during the period from the Transition Date through March 31, 1998 (consisting of $4.1 billion from extensions of contracts or new contracts with existing customers and $200.0 million from contracts with new customers); (ii) significantly reducing order fulfillment times; (iii) maintaining a strong safety record at the gaseous diffusion plants (the "GDPs") while increasing Company-wide focus on regulatory compliance; and (iv) obtaining certification for the GDPs from the U.S. Nuclear Regulatory Commission (the "NRC"). In addition, USEC has acquired a significant inventory of uranium from the U.S. Government.

RISK FACTORS

An investment in the Common Stock involves certain risks associated with the Company's business, including the following: (i) risks associated with enrichment operations; (ii) reliance on the nuclear utility industry and customer concentration; (iii) competition and the trend toward lower pricing; (iv) risks associated with the contract between USEC and Techsnabexport Co. Ltd., a Russian government entity ("Tenex"), dated January 14, 1994 (the "Russian HEU Contract"); (v) dependence on sustained supply of electricity; (vi) risks related to Atomic Vapor Laser Isotope Separation ("AVLIS"); (vii) risks associated with international trade regulations;

(viii) fluctuations in the Company's quarterly financial results due to cyclical demand; (ix) risks associated with NRC regulation; and (x) certain environmental risks.

For a fuller discussion of these and other risk factors affecting the Company and its businesses, see "Risk Factors."

STRATEGY

The Company's goal is to continue to be the world's leading supplier of uranium fuel enrichment services and to diversify over time into related strategic businesses that will contribute to the Company's growth and profitability. To achieve its goal, the Company intends to focus on the following:

Aggressively Pursue Sales Opportunities. The Company has implemented a strategy designed to increase sales to existing customers and to add new customers. Flexible contract terms have replaced standardized DOE contracts, and the Company has increased its attention to customer service, product quality and reliability.

Improve Operating Efficiencies. The Company plans to continue to improve operating efficiencies and productivity by implementing and monitoring a rigorous cost management program.

Commercialize AVLIS Technology. USEC plans to complete the development and commence commercialization of the next generation of uranium enrichment technology, AVLIS, which uses lasers to enrich uranium, and which should permit USEC to remain one of the lowest cost suppliers of uranium enrichment services and enhance its competitive position. Commercial deployment of AVLIS is anticipated in 2005.

Diversify Over the Longer Term. Over the longer term, the Company intends to diversify its business by pursuing selected growth opportunities that build upon the Company's core competencies, technology and customer relationships.

COMPETITIVE ADVANTAGES

Although the Company operates in a highly competitive environment, USEC believes that the following factors should enable it to compete effectively and continue as the world leader in the uranium enrichment market:

- Strong Financial Position. USEC's strong financial position results from a significant backlog of contracted services attributable to established customers and a pro forma balance sheet at March 31, 1998 with $550.0 million in debt (representing 32% of total capitalization, adjusted to include short-term debt). The Company has long-term requirements contracts with utilities to provide uranium enrichment services aggregating $3.2 billion through fiscal 2000 and $7.4 billion through fiscal 2009.

- Favorable Arrangements with the U.S. Government. The Company is the beneficiary of several favorable long-term arrangements with the U.S. Government, implemented in connection with USEC's Privatization. These arrangements, which will continue following the Privatization, include:

- An advantageous lease providing for nominal rent payments for its production facilities with an open term renewal option;

- Low-cost power purchase arrangements pursuant to which USEC purchases electricity (which represents up

to 59% of the Company's production costs) at an average cost of less than 2 cents/ kWh; and

- The assumption by the U.S. Government of substantially all liabilities arising from the operation of the GDPs prior to the Privatization, including substantially all environmental liabilities.

- AVLIS. USEC has the exclusive commercial rights to the AVLIS technology developed by the U.S. Government and believes that it has a considerable lead-time advantage over others attempting to develop similar laser-based uranium enrichment technology.

- Ability to Complete Sales from Natural Uranium Inventory. USEC is positioned to supplement its uranium enrichment revenues through new sales of natural uranium. USEC's existing inventory contains a substantial amount of natural uranium, which has been supplemented by the transfer of additional uranium from the U.S. Government.

- Executive Agent Under a U.S./Russia Agreement. USEC is the Executive Agent for the United States under a government-to-government agreement between the United States and the Russian Federation. In this capacity, USEC purchases from Russia the separative work unit ("SWU") component of low-enriched uranium ("LEU") derived from highly enriched uranium ("HEU") recovered from dismantled nuclear weapons of the former Soviet Union. Although acting as U.S. Executive Agent may pose certain risks, the arrangement provides an important strategic opportunity for USEC to introduce additional uranium enrichment services from Russia to the global market on an orderly basis and in a competitive manner that ensures the reliability and continuity of supply to enrichment customers.

THE URANIUM ENRICHMENT MARKET

Demand for uranium enrichment services is a function of the number of nuclear reactors using enriched uranium fuel and their fuel requirements. Nuclear power accounts for 19% of the domestic and 17% of the worldwide production of electricity. As of March 31, 1998, there were 108 utilities operating 378 nuclear power reactors that use enriched uranium for fuel, including 105 reactors in the United States.

The world demand for enrichment services is anticipated to be relatively stable or increase slightly over the next 10 to 15 years. USEC believes that the nuclear power market in the U.S. and Western Europe may decline slightly over the next 10 to 15 years, counter-balanced by an increase in the Asian market during the same period. The Company anticipates that decreases in demand from reactors that cease operations during this period will be offset by increases in demand from new reactors expected to come on-line, as well as by increased utilization at existing reactors. Globally, uranium enrichment is provided by four major suppliers, including USEC.

HISTORY OF USEC

USEC was established by the Energy Policy Act of 1992 (the "Energy Policy Act") as a wholly-owned government corporation to take over DOE's uranium enrichment operation. This transfer to a government-owned corporation was intended to enable USEC to operate like a private sector business in preparation for its eventual privatization.

In April 1996, the USEC Privatization Act (the "Privatization Act") was enacted, which provided the mechanics

for the Privatization, clarified the relationship between USEC and the U.S. Government following the Privatization and addressed certain other matters. By facilitating the transfer of the uranium enrichment business to the private sector, the U.S. Government sought to position the Company as a viable competitor in the global market for uranium enrichment services. On July 25, 1997, in accordance with the Energy Policy Act, President Clinton approved the implementation of the Privatization.

After the Privatization, the U.S. Government will not own any Shares of the Company, and the Company will not be an agency or instrumentality of the U.S. Government.

* * *

The Company's principal office is located at 2 Democracy Center, 6903 Rockledge Drive, Bethesda, MD 20817, and its telephone number is (301) 564-3200.

* * * * *

AVLIS

New Technology. There are a number of risks associated with the development and commercialization of AVLIS, a new laser-based uranium enrichment technology (see "Business—Advanced Laser-Based Technology"), and any of these could have a material adverse effect on the Company's financial or competitive position. Additional equipment demonstration and testing activities are necessary before the Company will be in a position to finalize its decision to construct a full-scale commercial facility. The Company could encounter unanticipated delays or expenditures at this stage. If the Company determines not to proceed with AVLIS de-

ployment, the Company would pursue other options for enrichment services such as GDP upgrades or exploring other new technologies, which could have a material adverse effect on the Company's financial or competitive position. In addition, the Company could incur certain additional costs in connection with terminating the AVLIS project, including payments to certain contractors. In the event the Company determines to deploy AVLIS, no assurance can be given that an AVLIS plant could be completed as scheduled or that a full-scale facility will operate at its design capacity.

Based on preliminary design drawings and assumptions regarding the suitability of available sites, AVLIS development and deployment was estimated in September 1997 to cost approximately $2.2 billion from fiscal 1998 through fiscal 2005. The Company periodically re-evaluates its AVLIS estimated costs and currently believes this estimate could vary by up to 20%. If the Company determines to deploy AVLIS, there can be no assurance that development costs or construction costs associated with AVLIS would not be higher than anticipated.

NRC Licensing of AVLIS. The NRC will have regulatory authority over the AVLIS plant and will have to issue a construction and operating license before construction can begin. The NRC will need to develop guidelines for its review of the facility. The development of the guidelines, or the nature and extent of any third-party intervention in the licensing process, could delay or otherwise affect licensing, which, in turn, could delay the commencement of construction. In addition, the NRC would likely require that the Company obtain commercial nuclear liability insurance as a condition to obtaining an NRC license since a commercial AVLIS

facility will not be indemnified under the Price-Anderson Amendments Act of 1988 (the "Price-Anderson Act"). There can be no assurance as to the availability, terms or coverage of insurance.

Financing. The Company will require significant financing to achieve commercial deployment of AVLIS. There can be no assurance that financing will be available when required, and the Company cannot predict the cost of or the terms on which such financing would be available.

Intellectual Property. The Company relies on a combination of patent laws, confidentiality procedures and contractual provisions to protect its proprietary information and intellectual property rights related to the AVLIS technology. The Company has received a letter from a third party setting forth such third party's belief that AVLIS will use certain of such third party's technology. See "Business—Advanced Laser-Based Technology—Intellectual Property." In addition, the Company is aware of patents issued to third parties which cover certain technology used in laser-based products; the Company or its licensors may be required to obtain a license to one or more of such patents. There can be no assurance that third party infringement claims will not be brought against the Company in the future, that the Company would not have to pay damages or would not be enjoined in the event any such claims were successful, or that the Company would be able to obtain necessary licenses to certain technology. In the event of such a successful claim of infringement, the Company believes that it can re-engineer the affected apparatus, system or method or obtain any necessary licenses from third parties. However, in the event the Company were

unable to successfully re-engineer or obtain from third parties any required licenses at a reasonable cost or at all, a successful claim of infringement could have a material adverse effect on the Company.

* * * * *

NATURAL URANIUM SALES

The Company anticipates supplementing its revenues from uranium enrichment services through sales of natural uranium in its inventory and natural uranium transferred to it by the DOE. The quantity of material that USEC will be able to sell in any given year and the revenue generated therefrom will be dependent on market conditions (including any sales by the U.S. Government out of its inventory) and prices at the time, as well as statutory and contractual restrictions on the volume of such sales. While the Company does not anticipate making significant natural uranium sales until after fiscal 2000, there can be no assurance that the Company will be able to sell such natural uranium at anticipated prices and quantities. The failure to complete sales of natural uranium as anticipated could have an adverse effect on the Company's financial condition. See "Business—Natural Uranium and HEU from DOE."

FOREIGN OWNERSHIP RESTRICTIONS

The Company's Certificate of Incorporation (the "Charter") sets forth certain restrictions on foreign ownership of securities of the Company, including a provision prohibiting foreign persons (as defined in the Charter) from collectively having beneficial ownership of more than 10% of such voting securities. The Charter also contains certain enforcement mechanisms with respect to the foreign ownership restrictions, including suspension of

voting rights, redemption of such Shares and/or the refusal to recognize the transfer of Shares on the record books of the Company. See "Description of Capital Stock—Foreign Ownership Restrictions."

ANTI-TAKEOVER PROVISIONS

Under the Privatization Act, no person may acquire, directly or indirectly, beneficial ownership of more than 10% of USEC's voting securities for a three-year period after consummation of the Privatization. The By-Laws establish certain advance notice requirements for the nomination of directors as well as for other stockholder proposals. The Company is also subject to Section 203 of the Delaware General Corporation Law ("DGCL"), which could have the effect of delaying or preventing a change in control of the Company. To the extent that these provisions discourage takeover attempts, they could deprive stockholders of opportunities to realize takeover premiums for their Shares or could depress the market price of the Shares. See "Description of Capital Stock."

* * * * *

MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion should be read in conjunction with, and is qualified in its entirety by reference to, the financial statements and notes thereto appearing elsewhere in this Prospectus.

OVERVIEW

USEC, a global energy company, is the world leader in the production and sale of uranium fuel enrichment ser-

vices for commercial nuclear power plants, with approximately 75% of the North America market and 40% of the world market. Uranium enrichment is a critical step in transforming natural uranium into fuel for nuclear reactors to produce electricity. Based on customers' estimates of their requirements, at March 31, 1998, the Company had long-term requirements contracts with utilities to provide uranium enrichment services aggregating $3.2 billion through fiscal 2000 and $7.4 billion through fiscal 2009.

The Company is the Executive Agent of the U.S. Government under a government-to-government agreement to purchase SWU recovered from dismantled nuclear weapons from the former Soviet Union for use in commercial electricity production. As the leading U.S. provider of enrichment services, the Company believes that it is best positioned to act as U.S. Executive Agent under the Russian HEU Contract because it can introduce SWU from Russian HEU in a manner that is not disruptive to an orderly market and ensures the reliability and continuity of supply to enrichment customers. The Company's cost of sales has been, and will continue to be, adversely affected by amounts paid to purchase SWU under the Russian HEU Contract at prices which are substantially higher than its marginal production cost at the GDPs. In addition, as the volume of Russian SWU purchases has increased, the Company has operated the GDPs at lower production levels resulting in higher unit production costs. Pursuant to the Russian HEU Contract, Russian SWU purchases will peak in calendar year 1999 at 5.5 million SWU per year and are expected to remain at that level thereafter.

The Company's agreements with electric utilities are generally long-term requirements contracts under which customers are obligated to purchase a specified percentage of their requirements for uranium enrichment services. Customers, however, are not obligated to make purchases or payments if they do not have any requirements. The stated term of contracts transferred by DOE to the Company on the Transition Date is 30 years, although future purchase obligations thereunder may be terminated by, among other things, giving 10 years' notice, although the Company has allowed shorter notice periods. The terms of newer contracts entered into by the Company since the Transition Date range from 3 to 11 years and do not typically provide for advance termination rights. The Company believes that the trend for contracts with shorter terms will continue, with the newer contracts generally containing terms in the range of 3 to 7 years.

The Company's revenue and operating results can fluctuate significantly from quarter-to-quarter, and in some cases, year-to-year. Customer requirements are determined by refueling schedules for nuclear reactors, which generally range from 12 to 18 months (or in some cases up to 24 months), and are in turn affected by, among other things, the seasonal nature of electricity demand, reactor maintenance, and reactors beginning or terminating operations. Utilities typically schedule the shutdown of their reactors for refueling to coincide with the low electricity demand periods of spring and fall. Thus, some reactors are scheduled for fall refueling, spring refueling or for 18-month cycles alternating between both seasons. In addition, USEC provides customers a window ranging from 10 to 30 days to take de-

livery of ordered product. The timing of larger orders for initial core requirements for new nuclear reactors also can affect operating results. Refueling orders are large, typically averaging $14.0 million per customer order for the Company's uranium enrichment services. The Company plans its cash outlays for power and other production costs, a significant portion of which is fixed in the short term, on the basis of meeting customer orders and achieving revenue targets for the year. As a result, a relatively small change in the timing of customer orders may cause earnings and cash flow results to be substantially above or below expectations. Notwithstanding this variability, the Company has significant backlog based on customers' estimates of their requirements for uranium enrichment services.

* * * * *

The Company utilizes approximately 4,300 workers at the GDPs who are employed by Lockheed Martin Utility Services, Inc. ("LMUS"), a subsidiary of Lockheed Martin Corporation ("Lockheed Martin"). Under an operations and maintenance contract with the Company (the "LMUS Contract"), LMUS provides labor, services, and materials and supplies to operate and maintain the GDPs, for which the Company funds LMUS for its actual costs and pays contracted fees. The LMUS Contract expires on October 1, 2000. If LMUS meets certain specified operating and safety criteria and demonstrates cost savings that exceed certain targets, LMUS can earn an annual incentive fee. On average, LMUS has earned 25% to 50% of the total potential incentive fees available under the contract, reflecting positive achievements in safety and customer deliveries offset by less-than-targeted achievement in production capability.

The Company accrues estimated costs for the future disposition of depleted UF(6) generated as a result of its operations. Costs are dependent upon the volume of depleted UF(6) generated and estimated conversion and disposal costs. The Company stores depleted UF(6) at the GDPs and continues to evaluate various proposals for its disposition. Pursuant to the Privatization Act and the Depleted UF(6) MOA, all liabilities arising out of the disposal of depleted UF(6) generated by USEC through the Privatization Date are the responsibility of DOE.

The Company leases the GDPs and process-related machinery and equipment at attractive, below-market terms from DOE. Upon termination of the Lease Agreement, USEC is responsible for certain lease turnover activities at the GDPs. Lease turnover costs are accrued over the estimated term of the Lease Agreement which is estimated to extend until 2005. Pursuant to the Energy Policy Act and the Privatization Act, with certain exceptions the U.S. Government is responsible for all environmental liabilities, including the decontamination and decommissioning of the GDPs at the end of their operating lives, associated with the operation of the GDPs prior to the Privatization Date.

The Company expects to incur additional production costs of $14.8 million per year subsequent to the Privatization for taxes other than income taxes and commercial property insurance premiums.

As Executive Agent under the Russian HEU Contract, the Company has committed to purchase SWU in the amount of $376.2 million in calendar 1998. In each of calendar years 1999 to 2001, the Company has committed to purchase SWU in the amount of $475.8 million,

subject to certain purchase price adjustments for U.S. inflation. Under an amendment to the Russian HEU Contract in November 1996, SWU quantities and a mechanism for establishing prices for SWU purchases under the Russian HEU Contract through 2001 have been set. As of March 31, 1998, the Company has committed to purchase SWU derived from HEU through 2001 as follows:

CALENDAR YEAR AMOUNT	SWU	DERIVED FROM METRIC TONS OF HEU
(MILLIONS)	(MILLIONS)	
Nine Months Ended December 31, 1998	4.4	24
$376.2		
1999	5.5	30
475.8		
2000	5.5	30
475.8		
2001	5.5	30
475.8		

The Russian HEU Contract has a 20-year term; the Company expects its purchases after 2001 to remain at the 5.5 million SWU per year level.

The Company pays for the SWU delivered under the Russian HEU Contract within 60 days after delivery. In order to facilitate and support the Russian Federation's implementation of the contract, however, the Company

made advance payments to Tenex of $60 million in calendar 1994 and $100 million in each of calendar years 1995 and 1996. The Company credits advance payments, up to $50 million per year, against half of the SWU value in each delivery and makes cash payments for the remaining portion. As of March 31, 1998, $162.0 million of the $260.0 million in advance payments had been credited against SWU purchased. From inception of the Russian HEU Contract to March 31, 1998, the Company purchased 6.5 million SWU derived from 35 metric tons of HEU at an aggregate cost of $556.5 million, including related shipping charges. At March 31, 1998, the Company had $98.0 million in credits remaining to be applied against future purchases of SWU as follows: $48.0 million to be applied in calendar 1998, and $50.0 million in calendar 1999.

* * * * *

INDUSTRY OVERVIEW

THE ENRICHMENT PROCESS

Overview. As found in nature, uranium consists of three isotopes, the two principal ones being uranium-235 (U(235)) and uranium-238 (U(238)). U(238) is the more abundant but is not fissionable. U(235) is the fissionable isotope, but its concentration in natural uranium is only about .711% by weight. Light water nuclear reactors, which are operated by most nuclear utilities in the world today, require low enriched uranium fuel, or LEU, with a U(235) concentration in the range of 3% to 5% by weight. Uranium enrichment is the process by which the concentration of U(235) is increased to that level.

Two existing commercial technologies are currently used to enrich uranium for nuclear power plants—the gaseous

diffusion process and the gas centrifuge process. The gaseous diffusion process involves the passage of UF(6) in a gaseous form through a series of filters (or porous barrier) such that the UF(6) is continuously enriched in U(235) as it moves through the process. Because U(235) is lighter, it passes through the barrier more readily than does U(238), resulting in a gaseous uranium that is enriched in U(235), the fissionable isotope. The gaseous diffusion process is power-intensive, requiring significant amounts of electricity to push the UF(6) through the filters. See "Business—Power." The other enrichment process, gas centrifuge, is significantly less power intensive than the gaseous diffusion process and employs rapidly spinning cylinders containing UF(6) to separate the fissionable U(235) isotope from the non-fissionable U(238).

The fundamental building block of the gaseous diffusion process is known as a stage, consisting of a compressor, a converter, a control valve and associated piping. The compressors, which are driven by large electric motors, are used to circulate the process gas and maintain flow. The converters contain porous tubes known as barrier through which the process gas is diffused. Stages are grouped together in series to form an operating unit called a cell. A cell is the smallest group of stages that can be removed from service for maintenance. Gaseous diffusion plants are designed so that cells can be taken off line with little or no interruption in the process. In each converter, the portion of the process gas that passes through the barrier is slightly enriched in U(235) and is fed to the next higher stage. The gas, which has not passed through the barrier, is depleted in U(235) to the same degree. It is recycled back to the next lower stage. Because the velocity difference between the two

isotopes of uranium is very small, hundreds of successive stages are required for enrichment. A gaseous diffusion plant configured to produce material with a U(235) concentration of 4% from material at .711% by weight U(235) would contain at least 1,200 stages in series. See "Business—GDPs/Operations."

SWU. The standard of measure of effort or service in the uranium enrichment industry is separative work units or SWU. A SWU is the amount of work or effort that is required to transform a given amount of natural uranium feed stock (UF(6)) into two streams of uranium, one enriched in the U(235) isotope and the other depleted in the U(235) isotope. Prices for enrichment services are based upon SWU, and the enrichment capacity of suppliers and the enrichment requirements of nuclear utilities are also denominated in SWU.

Overfeeding/Underfeeding. SWU (and the related electricity required for enrichment) and natural uranium are, to a certain extent, interchangeable in the process to create enriched uranium. The Company can feed (i) more natural uranium into the enrichment process, a mode of operation called "overfeeding," or (ii) less uranium into the enrichment process, a mode of operation called "underfeeding." Overfeeding is economical if the sum of the value of the additional natural uranium and the cost of disposing of the additional depleted UF(6) generated is lower than the cost of the electricity used to produce the additional enriched uranium. Underfeeding is economical if the cost of the additional electricity required is lower than the savings from the use of less natural uranium and its related disposal costs. Underfeeding serves to stockpile the inventory of natu-

ral uranium which, if not needed for production, can be sold.

THE NUCLEAR FUEL CYCLE

Electric utilities with light water nuclear reactors require fissionable uranium because it is the act of fission which releases the necessary heat required to produce steam for the turbines which generate electricity. The provision of uranium enrichment services (i.e., the process by which the concentration of the fissionable isotope U(235) in natural uranium is increased to levels suitable for commercial use) is one vital step in the nuclear fuel cycle as depicted in the diagram below. Utilities typically obtain natural uranium as uranium ore concentrate from a mining and milling company or other natural uranium supplier. Utilities arrange to have the uranium ore concentrate converted to uranium hexafluoride (UF(6)) at one of several converters located around the world. The UF(6) is delivered to an enrichment services provider, such as the Company, for enrichment in U(235). The enriched uranium is transported to a nuclear fuel fabricator to have the enriched UF(6) converted into uranium dioxide pellets for fabrication into fuel elements suitable for use in nuclear reactors.

Commercial Nuclear Fuel Cycle.

Enrichment is one of a series of steps required to prepare naturally occurring uranium for use as nuclear fuel.

[Graphic Omitted]

MARKET FOR ENRICHMENT SERVICES

Supply Overview. There are currently four major uranium enrichment suppliers worldwide: USEC, Tenex, Eurodif and Urenco. Tenex is an entity of the Russian

government. Eurodif is a multinational consortium controlled by the French government. Other participants in the consortium include the Spanish, Belgian, Italian and Iranian governments. Urenco is a consortium owned one-third by the British government, one-third by the Dutch government and one-third by two German utilities. Japan Nuclear Fuels Limited ("JNFL") and a Chinese state-owned enrichment supplier are smaller providers that primarily serve their respective domestic markets. See "Risk Factors—Competition; Currency Exchange Rates; Trend Toward Lower Pricing."

In addition, a relatively small spot market exists for uranium enrichment services. The spot market developed in the mid-1980s as a result of utilities reselling enrichment services that they were required to purchase under take-or-pay contracts for reactors that were subsequently canceled or delayed and by SWU sales from the former Soviet Union. By the early 1990s, however, the spot market had declined in importance due to the elimination of utilities' excess inventories and the impact of trade restrictions and market practices in certain countries which have restricted sales from states of the former Soviet Union into these markets. In 1997, the spot market supplied less than 2% of the total world market for enrichment services.

Suppliers and Market Share. The following table sets forth certain information about the major SWU suppliers, including the Company's estimate of the SWU production capacity for each supplier. "Nameplate Capacity" refers to the designed capacity of the facilities operated by the suppliers. Supply for Tenex also reflects trade restrictions and market practices limiting its ability to sell in the U.S., Western Europe and certain Asian countries.

FISCAL YEAR 1997 ESTIMATED ENRICHMENT CAPABILITIES (IN MILLIONS)

SUPPLIER TECHNOLOGY	NAMEPLATE CAPACITY (1) (SWU)	SUPPLY (SWU)	
USEC			
Produced	18.7	10.3	Gaseous Diffusion
Purchased	--	3.1	Purchased
USEC Total	18.7	13.4	
Eurodif	11.0	7.5(2)	Gaseous Diffusion
Tenex	20.0	7.5	Gas Centrifuge
Urenco	3.8	3.8	Gas Centrifuge
Other (3)	1.5	1.5	Various
Total	55.0	33.7	

Source: Company estimates derived from industry, trade and consulting publications

(1) Nameplate capacity refers to the designed capacity of the facilities operated by the respective supplier.

(2) Eurodif's production reflects its current economics: the relative SWU price versus the prevailing cost of power.

(3) This includes the spot market, JNFL and a Chinese state-owned facility.

The Company's estimate of the fiscal 1997 market share of the four major suppliers and the spot market in the five geographical market sectors is set forth in the following table.

FISCAL YEAR 1997 ESTIMATED WORLDWIDE MARKET SHARE

	FY 97 WORLD MARKET SHARE	NORTH AMERICA (1)	ASIA	W. EUROPE	OTHER (2)
USEC	40% (3)	75% (3)	68%	10%	0%
Eurodif	22(4)	12	14	49	28
Tenex	11	5(4)	5	16	0
Urenco	4	7	6	24	45
Spot/Other(5)	100%	2	8	2	100%
Total (6)		100%	100%	100%	

Source: Company estimates derived from industry, trade and consulting publications

(1) Includes: U.S. and Mexico.
(2) Includes: Argentina, Brazil, China, India, Iran, Pakistan, South Africa, North Korea and Turkey.
(3) Includes approximately 4.5% North American and 1.5% world market share for Russian matched sales. See "Business—Foreign Trade Matters."

(4) Excludes Russian matched sales in the U.S. See "Business—Foreign Trade Matters."
(5) Includes the spot market, JNFL and a Chinese state-owned facility.
(6) Percentages may not sum to 100% due to rounding.

Eurodif operates a single gaseous diffusion plant and is part of a closely interlocked French nuclear infrastructure; it purchases nearly all of its power from Electricite de France ("EdF") and sells about 60% of its annual SWU output to EdF.

The Tenex facilities consist of a number of early-generation gas centrifuge plants. Although Tenex's centrifuge plants are older and therefore less efficient than those of Urenco, USEC believes that Tenex has the lowest overall production costs of the major suppliers. Tenex benefits from (i) low power requirements (a characteristic of centrifuge technology), (ii) moderate manpower costs (a result of its low wage rate, notwithstanding its high labor and overhead levels) and (iii) minimal capital charges. Despite Tenex's favorable cost structure, it operates at less than maximum capacity because trade and political restrictions limit its ability to access the United States, Western European and certain Asian markets. In addition, the Company believes that Tenex's production capacity is further constrained by its current equipment conditions.

Urenco has a favorable competitive cost position, influenced significantly by its use of the gas centrifuge. Although Urenco's production capacity is currently 3.8 million SWU, it continues to add capacity and make systematic improvements to its centrifuge designs, thereby increasing efficiency and output. These changes serve to incrementally improve Urenco's cost position and increase capacity, which is expected to increase to approximately 5 million SWU by

2000. Urenco is also currently in the testing phase of its latest centrifuge technology, which could be deployed in the 2000 to 2001 time frame.

Additional Supply Sources. In addition to the primary uranium enrichment suppliers, other sources of enriched uranium exist. The principal source is LEU derived from HEU obtained from dismantled United States and Russian nuclear weapons and military stockpiles. As the Executive Agent to the U.S. Government under the government-to-government agreement between the United States and the Russian Federation, USEC purchases the uranium enrichment component of HEU recovered from dismantled Russian nuclear weapons. USEC has also received transfers of HEU from the U.S. Government. Russia has significant supplies of HEU from dismantled weapons and military stockpiles, and its future disposition plans are unknown. According to an HEU disposition plan issued by the DOE in 1996, the U.S. Government has approximately 35 to 40 metric tons of excess HEU which the U.S. Government could blend down into LEU and introduce into the market in the 2001 to 2011 time frame. With respect to any U.S. Government sales of this material, such future sales would be subject to the provisions of the Privatization Act applicable to such sales.

Enrichment capacity can also be added through increases in existing capacities of suppliers or by the construction of new facilities or development of new processes. As discussed above, Urenco has plans to expand its output and is also currently testing a more advanced centrifuge. Both JNFL and the Chinese Government have been pursuing capacity expansion programs through incremental construction and the acquisition of centrifuge technology which in total is not expected to exceed a capacity of 2.1 million SWU per year.

Demand Overview. According to the Nuclear Energy Institute, an industry organization, nuclear power represents approximately 19% of the domestic and 17% of the worldwide utility electricity production. The demand for uranium enrichment services is a function of the total number of light water nuclear reactors using enriched uranium fuel and their total fuel requirements. As of March 31, 1998, there were 108 utilities operating 378 nuclear reactors that use enriched uranium for fuel in 28 countries. This includes 44 utilities operating 105 nuclear reactors in the United States.

Substantial increases or decreases in total SWU demand occur only as new reactors are brought on line or when others cease operations. Based on the relatively low operating costs of nuclear reactors, most utilities run their nuclear reactors at maximum output to meet their base-load requirements. Because of this base-load nature of nuclear operations, declines in electricity consumption have a relatively modest impact on the fuel needs of operating reactors. As a result, over the long term, utility demand for SWU is generally stable.

Deliveries of enriched uranium to customers are determined by reactor refueling schedules which are affected by, among other things, the seasonal nature of electricity demand and the operating availability of the reactor. Utilities try to schedule the shutdown of their reactors for refueling to coincide with periods of low demand, typically spring and fall. For efficiency reasons, utilities also attempt to run their reactors for periods of 12 months, 18 months, or in some cases, up to 24 months between refuelings. Thus some reactors are scheduled for fall refuelings, some for spring refuelings, and some are scheduled for 18-month cycles which alternate between the two seasons.

LEU may only be exported to utilities in those countries that have a nuclear agreement for cooperation in effect with the United States. Since not all countries are parties to such agreements with the United States, certain markets are not currently available to the Company. See "Business—Foreign Trade Matters."

* * * * *

BUSINESS

1. OVERVIEW

USEC, a global energy company, is the world leader in the production and sale of uranium fuel enrichment services for commercial nuclear power plants. USEC currently has approximately a 75% share of the North American uranium enrichment market and a 40% share of the world market. Uranium enrichment is a critical step in transforming natural uranium into fuel for nuclear reactors to produce electricity. USEC enriches uranium utilizing the gaseous diffusion process at two plants located in Paducah, Kentucky and near Portsmouth, Ohio. USEC's fiscal 1997 revenue and pre-tax income were $1.6 billion and $250.1 million, respectively. The Company's net income on a pro forma basis (primarily to reflect provision for federal, state and local income taxes and interest expense) for fiscal 1997 was $133.2 million.

The Company supplies enriched uranium to approximately 60 customers for use in 176 nuclear reactors located in 14 countries throughout the world. Generally, the Company's contracts with its customers are "requirements" contracts pursuant to which the customer is obligated to purchase a specified percentage of its enriched uranium requirements from the Company. Consequently, the Company's annual sales are dependent upon the customers' requirements for

the Company's services, which are driven by nuclear reactor refueling schedules, reactor maintenance schedules, customers' considerations of costs, and regulatory actions. Based on customers' estimates of their requirements, as of March 31, 1998, the Company had long-term requirements contracts with utilities to provide uranium enrichment services aggregating approximately $3.2 billion through fiscal year 2000 and $7.4 billion through fiscal year 2009. As of March 31, 1997, the Company had long-term requirements contracts to provide uranium enrichment services aggregating approximately $3.6 billion through fiscal year 1999 and $8.6 billion through fiscal year 2008.

The Company began operations on the Transition Date when the U.S. Government's uranium enrichment activities were transferred from DOE to the Company. Since the Transition Date, USEC has adopted a series of private-sector management practices which have enabled it to be more responsive to its customers and to market forces. Applying private sector principles has significantly improved the Company's competitive positioning by: (i) adding $4.3 billion in new contract commitments through fiscal 2009 during the period from the Transition Date through March 31, 1998 (consisting of $4.1 billion from extensions of contracts or new contracts with existing customers and $200.0 million from contracts with new customers); (ii) significantly reducing order fulfillment times; (iii) maintaining a strong safety record at the GDPs while increasing Company-wide focus on regulatory compliance; and (iv) obtaining certification for the GDPs from the NRC. In addition, USEC has acquired a significant inventory of uranium from the U.S. Government.

STRATEGY

The Company's goal is to continue to be the world's leading supplier of uranium fuel enrichment services and to diver-

sify over time into related strategic businesses that will contribute to the Company's growth and profitability. To achieve its goal, the Company intends to focus on the following:

Aggressively Pursue Sales Opportunities. The Company has implemented a strategy designed to increase sales to existing customers, many of whom currently buy less than 100% of their requirements from the Company (typically 70%) and to add new customers. Flexible contract terms have replaced standardized DOE contracts, and the Company has increased its attention to customer service, product quality and reliability. Management has implemented a variety of private-sector marketing principles which emphasize responsiveness to the needs of individual customers. In addition, USEC is committed to capitalizing on its reputation as a reliable and timely supplier and to delivering superior customer service. The Company has actively worked to reduce delivery times and has implemented an electronic order service system to facilitate management of customer orders and tracking of inventory.

Improve Operating Efficiencies. The Company plans to continue to improve operating efficiencies by implementing a rigorous cost management program. A cornerstone of this program is USEC's commitment to continually investigate opportunities to purchase low-cost power and to seek the most efficient use of non-firm power to minimize the cost of power per SWU produced. The Company has also adopted cost containment goals intended to be achieved through improved power utilization, increased SWU production per labor hour, and other material and service cost reductions. USEC is committed to containing operating costs while ensuring continued compliance with health, safety and environmental standards.

Commercialize AVLIS Technology. USEC plans to complete the development and commence commercialization of the next generation of uranium enrichment technology, AVLIS, which uses lasers to enrich uranium, and which should permit USEC to remain one of the lowest cost suppliers of uranium enrichment services and enhance its competitive position. The Company believes that it will be able to deploy a full-scale AVLIS facility in 2005. In addition, it is possible that the AVLIS technology may have applications in the medical, precision tool and semiconductor industries which the Company may elect to explore either on its own or through licensing arrangements. As AVLIS is being brought on line for production, the GDP facilities and AVLIS are expected to operate simultaneously. By 2006, AVLIS is expected to be able to displace some or all of the production of the GDPs; however, the Company will evaluate issues such as market demand and other supply sources at that time prior to making any decisions with respect to the GDPs.

Diversify Over the Longer Term. The Company intends to diversify its business over time into related strategic businesses that will contribute to the Company's growth and profitability. This strategy could, among other things, result in the Company becoming involved in other phases of the nuclear fuel cycle that draw on its knowledge of the nuclear industry thereby allowing the Company to become a leader in the global nuclear energy market. Although the Company as a government corporation has not identified any acquisitions or strategic alliances, it intends to pursue appropriate opportunities which, among other criteria, are expected to: (i) offer a favorable balance with respect to market potential and manageable market entry risk; (ii) broaden USEC's operating base beyond its core busi-

ness in ways that allow for the leveraging of its core competencies; (iii) diversify risk by being counter-cyclical to existing business; (iv) earn returns in excess of certain financial benchmarks including USEC's cost of capital; and (v) be accretive to earnings within a reasonable period of time.

COMPETITIVE ADVANTAGES

Although the Company operates in a highly competitive environment, USEC believes that the following factors should enable it to compete effectively and continue as the world leader in the uranium enrichment market:

- Strong Financial Position. USEC's strong financial position results from a significant backlog of contracted services attributable to established customers and a pro forma balance sheet at March 31, 1998 with $550.0 million in debt (representing 32% of total capitalization, adjusted to include short-term debt). The Company has long-term requirements contracts with utilities to provide uranium enrichment services aggregating approximately $3.2 billion through fiscal 2000 and $7.4 billion through fiscal 2009.

- Favorable Arrangements with the U.S. Government. The Company is the beneficiary of several favorable long-term arrangements with the U.S. Government, implemented in connection with the Privatization. These arrangements, which will continue following the Privatization, include:

  - An advantageous lease providing for nominal rent payments for its production facilities with an open term renewal option;

  - Low-cost power purchase arrangements pursuant to which USEC purchases electricity (which represents up to 59% of the Company's production costs) at an average cost of less than 2 cents/kWh; and

- The assumption by the U.S. Government of substantially all liabilities arising from the operation of the GDPs prior to the Privatization, including substantially all environmental liabilities.

- AVLIS. USEC has the exclusive commercial rights to the AVLIS technology developed by the U.S. Government and believes that it has a considerable lead-time advantage over others attempting to develop similar laser-based uranium enrichment technology. The Company believes this new technology has the potential to offer significant cost advantages over both gaseous diffusion and centrifuge technology. The Company estimates that AVLIS will use only 5% to 10% of the power currently required of gaseous diffusion, will require significantly less capital investment than new centrifuge plants of similar capacity and will operate at levels requiring about 20% to 30% less natural uranium to produce comparable amounts of enriched uranium.

- Ability to Complete Sales from Natural Uranium Inventory. USEC is positioned to supplement its uranium enrichment revenues through new sales of natural uranium. USEC's existing inventory contains a substantial amount of natural uranium, which has been supplemented by the transfer of additional uranium from the U.S. Government. See "Business—Natural Uranium and HEU from DOE."

- Executive Agent Under an U.S./Russia Agreement. USEC is the Executive Agent for the United States under a government-to-government agreement between the United States and the Russian Federation. In this capacity, USEC purchases from Russia the SWU component of LEU derived from HEU recovered from dismantled nuclear weapons of the former Soviet Union. Although acting as U.S. Executive Agent may pose certain risks, the arrangement provides an important strategic opportunity for USEC to introduce ad-

ditional uranium enrichment services from Russia to the global market on an orderly basis and in a competitive manner that ensures the reliability and continuity of supply to enrichment customers. See "Business—Russian HEU Contract."

SALES AND MARKETING

One of the Company's top priorities has been to obtain additional commitments from existing customers and to add new customers. In pursuing this priority, the Company has initiated a flexible approach to both pricing and service, including shortening customer order lead times and introducing systems to manage natural uranium provided by customers, while implementing a variety of initiatives designed to improve customer service.

The Company has contracts with 64 nuclear utility customers operating 273 nuclear reactors located in 14 countries. USEC provides enrichment services to 176 of these reactors. Domestic customer purchases accounted for 60% of the Company's fiscal 1997 revenue and foreign customers represented 40%. The proportion of annual revenue generated from domestic and foreign customers is expected to remain relatively constant through the end of the decade.

Following the Transition Date, the Company established a Sales and Marketing unit as a part of its strategy to grow its core business. This unit now includes 18 professionals working in three groups. The first group includes persons responsible for direct sales and is organized into two teams covering the North American and international markets, respectively. The sales executives negotiate contracts and work to establish ongoing positive relationships with their assigned customers. The second group focuses on customer service and revenue accounting. The third group develops and sustains USEC's competitive differentiation in the mar-

ketplace with the goal of ensuring that the Company maintains its market position in pricing, customer value-added service and market share.

As a part of its marketing strategy, the Company endeavors to differentiate its services from those of its competitors. In this regard, the Company believes that in making their purchasing decisions, utilities consider the price of enrichment services to be the most significant factor; however, issues of reliability, product quality and customer service are also important. The Company believes that it offers competitive prices and that it delivers superior customer service. In addition, the Company has a strong reputation as a reliable long-term supplier of enrichment services. See "Business —Competition." Consequently, the Company's marketing strategy includes efforts to educate utilities to associate the combination of these positive features—competitive pricing, customer service, reliability—with the "USEC" name. USEC believes that this name "branding" strategy will help differentiate its services from those of its competitors and enhance its position as the industry leader.

No one customer accounted for more than 10% of fiscal 1997 revenue. The Company's 10 largest customers collectively accounted for 50% of its fiscal 1997 revenue and included Arizona Public Service Company, Carolina Power and Light Company, Commonwealth Edison Company, Empresa Nacional Del Uranio, S.A. (Spain), Houston Lighting & Power Company, The Kansai Electric Power Company, Incorporated (Japan), Korea Electric Power Corporation, PECO Energy Company, Tennessee Valley Authority and Tokyo Electric Power Company, Inc.

CUSTOMER CONTRACTS AND PRICING

Overview. In excess of 95% of enrichment services are provided by primary suppliers selling directly to utilities under

multi-year contracts. While some of these contracts are for fixed quantities, the vast majority are "requirements" contracts. Under a requirements contract, enrichment services are provided as and when needed. The amount of enrichment services actually purchased, therefore, depends on a number of factors including the capacity and performance of the reactor. Under this type of contract, the supplier receives the benefit of increases and assumes the risk of reductions in demand. Transactions are small in number but large in size, with a typical contract exceeding $50 million in value. Purchasing strategies tend to differ by utility size, region of the world and the relative value placed upon reliability, price and flexibility. There is an emerging trend among utilities to divide their purchases among several shorter-term contracts and stagger their renegotiations, thereby giving themselves maximum flexibility to respond to the market.

The Company currently provides enrichment services to customers under two types of requirements contracts: (i) the "Utility Services Contracts," which are the uniform contracts that were transferred to the Company by DOE on the Transition Date, and (ii) New Contracts, which are (A) contracts negotiated or renegotiated by the Company with existing and new customers since the Transition Date which have been tailored to meet the particular needs of individual customers and (B) certain Utility Services Contracts which have been substantially amended since the Transition Date. A majority of USEC's customers have transitioned from their older Utility Service Contract or equivalent contract to New Contracts.

CUSTOMERS AND REVENUE BY CONTRACT TYPE

NEW CONTRACTS	UTILITY SERVICES CONTRACTS	
Number of utility customers	50	10
FY 1995 Revenue	80%	20%
Number of utility customers	39	25
FY 1996 Revenue	58%	42%
Number of utility customers	34	30
FY 1997 Revenue	46%	
Number of utility customers	29	35
Nine months ended March 31, 1998 Revenue	47%	53%

Utility Services Contracts. As originally executed by DOE and the customers in 1984, the Utility Services Contracts have a term of 30 years. Pursuant to the terms of these contracts, a customer may terminate its future purchase obligation without penalty if it provides 10 years' prior notice of such termination and may terminate on shorter notice by incurring a substantial termination fee.

Twenty-one customers with Utility Services Contracts are not obligated to purchase from USEC in at least one of the fiscal years 1999 through 2002 pursuant to their exercise of termination rights prior to the Transition Date.

To avoid anticipated terminations and facilitate new contract discussions, the Company has waived the 10-year notice provision for each year from fiscal 2003 through 2008, inclusive. Accordingly, the Utility Service Contract customers who have not already exercised the termination right or who have not already made firm commitments for these years can now terminate commitments to the Company in any of fiscal 2003 through 2008 by giving notice no later than October 1, 1998.

* * * * *

LEASE AGREEMENT

1. The Lease Agreement, which commenced on July 1, 1993, had an initial term of 6 years. The Company has the right to extend the Lease Agreement indefinitely, with respect to either or both GDPs, for successive renewal periods. In June 1997, the Company renewed the Lease Agreement for both GDPs for an additional five year term expiring on June 30, 2004. The Company may terminate the Lease Agreement, with respect to one or both GDPs, by providing two years' prior notice to DOE. The Company leases most, but not all, of the buildings and facilities at the GDP sites. The Company may increase or decrease the property under the

Lease Agreement to meet its changing requirements. Within the contiguous tracts, certain buildings, facilities and areas related to environmental restoration and waste management have been retained by DOE and are not leased to the Company.

Lease Agreement payments include a base rent representing DOE's costs in administering the Lease Agreement, including costs relating to the electric power contracts, and costs relating to DOE's regulatory oversight of the GDPs. The Company expects that the cost of the Lease Agreement will be $3.2 million in fiscal 1998.

The Lease Agreement permits DOE to store personal property, including certain hazardous materials, at the GDPs. The Lease Agreement also permits DOE to bring additional hazardous materials to the GDPs with the Company's express and specific written consent and as long as it does not significantly interfere with Company operations, and makes DOE solely responsible for the care and maintenance of DOE's personal property, any costs of its removal or disposal and for the decontamination and decommissioning of such personal property except to the extent such liability arises out of the Company's negligence or willful misconduct.

At termination of the Lease Agreement, the Company may leave the property in "as is" condition, but must remove all waste generated by the Company which is subject to offsite removal and must place the GDPs in a safe shutdown condition. Upon termination of the Lease Agreement, DOE is responsible for the costs of all decontamination and decommissioning of the GDPs. If removal of any USEC capital improvements increases DOE's decontamination and decommissioning costs, the Company is required to pay such increases. Title to capital improvements not removed by the

Company will automatically be transferred to DOE at the end of the Lease Agreement term. The Company anticipates accruing $5.6 million per year for lease turnover costs in each of fiscal 1998 and 1999.

DOE is required under the Lease Agreement to indemnify the Company for certain costs and expenses, including: (i) certain environmental liabilities attributable to operations prior to the Transition Date; (ii) certain employee pension, welfare and other benefits or liabilities incurred or accrued prior to the Transition Date; and (iii) costs or expenses relating to actions taken or not taken prior to the Transition Date pursuant to contracts transferred to the Company on the Transition Date. In addition, under the Lease Agreement DOE is required to indemnify the Company for costs and expenses related to claims asserted against or incurred by the Company arising out of DOE's operation, occupation or use of the GDPs after the Transition Date. DOE activities at the GDPs since the Transition Date have been focused primarily on environmental restoration and waste management and management of depleted UF(6). DOE is required to indemnify the Company against claims for public liability (i) arising out of or in connection with activities under the Lease Agreement, including transportation and (ii) arising out of or resulting from a nuclear incident or precautionary evacuation. DOE's obligations are capped at the $8.96 billion statutory limit set forth in the Price-Anderson Act for each nuclear incident or precautionary evacuation occurring inside the United States.

* * * * *

[FOR PUBLIC FILE]

ShawPittman
A Law Partnership Including Professional Corporations

STEPHAN E. BECKER
202.663.8277
stephan.becker@shawpittman.com

PUBLIC DOCUMENT
Investigation Nos. A-427-818, C-427-819, A-412-820, C-412-821, A-428-828, C-428-829, A-421-808, C-421-809

Total Number of Pages: 17

December 19, 2000

VIA HAND DELIVERY

The Honorable Norman Y. Mineta
Secretary of Commerce
Attn: Import Administration
U.S. Department of Commerce, Room 1870
14th Street & Constitution Avenue, N.W.
Washington, D.C. 20230

Re: Petition for the Imposition of Antidumping And Countervailing Duties On Low Enriched Uranium From France, Germany, The Netherlands and the United Kingdom

Dear Secretary Mineta:

This letter is filed on behalf of the Ad Hoc Utilities Group (the "Utilities Group") and its individual members, and serves as our entry of appearance. The members of the

Utilities Group are Arizona Public Service Co.; Carolina Power & Light Co.; Commonwealth Edison Co.; Consumers Energy; Dominion Generation; Duke Energy Corp.; DTE Energy; Entergy Services, Inc.; First Energy Nuclear Operating Co.; Nuclear Management Co.; PSEG Nuclear LLC; Southern Nuclear Operating Co.; Union Electric Company (d/b/a AmerenUE); and Wolf Creek Nuclear Operating Corp.

* * * * *

> The Department will not consider the subcontractor to be the manufacturer or producer, regardless of the proportion of production attributable to the subcontracted operation or the location of the subcontractor or owner of the goods.[3]

In prior cases involving this issue, the Department has considered a mix of factors such as whether the party contracting for the tolling: (a) pays the toller a processing fee; (b) purchases the raw materials and provides the materials to the subcontractor who produces the merchandise; (c) maintains title over the raw materials; (d) controls the production process in terms of specifying the quantity, type and size of the product; and (e) controls the sale of the merchandise. No one factor is controlling, and all of them need not be present, but factors such as these have led the Department to determine that tollers are not producers of the subject merchandise.[4]

---

[3] *See Antidumping Duties; Countervailing Duties; Proposed Rule*, 61 FR 7330 (February 27, 1996).

[4] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 Fed. Reg. 51427, 51435 (Oct. 1, 1997) ("*Collated Roofing Nails*"); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Forged Stainless Steel*

Utilities' enrichment services contracts with USEC represent a classic example of toll production.

A. The Utilities Pay USEC A Processing Fee For Its Services

Pursuant to the enrichment services contracts, the utilities pay USEC a fee to enrich uranium. The fee itself is measured in terms of separative work units ("SWU"), which represents the measure of work required to produce the end product that was requested by the utility under the contract.[5]

B. The Utilities Purchase The Uranium Feed Material And Provide It To USEC

The utilities purchase the uranium feed material and provide it to USEC for enrichment. USEC has suggested that the timing of the delivery of the feed material somehow indicates that it is "effectively a payment in kind" for the feed component contained in the LEU.[6] Based on the collective experience of the Utilities Group, this assertion contradicts standard contracting practice in the enrichment services industry for three principal reasons.

First, enrichment services contracts typically contain articles describing the price and terms of payment for

---

Flanges from India, 58 Fed. Reg. 68853, 68856 (Dec. 29, 1993) ("*Flanges from India*").

[5] Separative work is the amount of effort expended upon a quantity of uranium feed in order to increase the contained assay of uranium-235 relative to that of other uranium isotopes.

[6] Petition for the Imposition of Antidumping And Countervailing Duties On Low Enriched Uranium From France, Germany, the Netherlands, and the United Kingdom, Dec. 7, 2000, at I-11, 13 ("Petition").

the enrichment services (SWUs) associated with the LEU delivered.[7] There is no mention of uranium feed in either of these articles.

Second, enrichment services contracts typically require the supplier to deliver LEU that contains uranium feed of the same country of origin as the uranium feed supplied by the utility.

Third, enrichment services contracts typically provide the utility an option to pick up the uranium tails associated with the enrichment process.[8] The supplier (USEC) only obtains title to the uranium tails in the event the utility fails to exercise its option.

The Utilities Group is not aware of any contract under which a utility has agreed to pay for enrichment services with uranium, and is doubtful that USEC has reported those purported "payments" as income.[9] In the view of the Utilities Group, it cannot seriously be disputed that the utilities provide USEC with the raw material inputs and have contracted with USEC to perform a service.

Moreover, in prior cases involving tolling, the Department has never required a demonstration that the input

---

[7] The article on price typically specifies the price in U.S. dollars to be paid by a utility for the quantity of SWUs associated with the LEU delivered by the supplier pursuant to the utility's enrichment order. The article on payment typically specifies the number of days following the delivery that the total price is payable.

[8] The enrichment services process produces a waste byproduct referred to as uranium tails or depleted uranium. The percentage of fissile uranium-235 contained in the tails is less than 0.711 percent, the percentage that exists in nature.

[9] The Department could easily verify this by inspecting USEC's accounting records.

products supplied by a particular company were the exact same inputs used in making the finished product, nor has it ever found that the inventory practices of the toiler were relevant in determining its status as a toiler.[10]

C. The Utilities Maintain Title to the Uranium Feed

The Utilities Group believes that the vast majority of utilities who have enrichment contracts with USEC maintain title to the uranium feed during the enrichment process. Utilities not only maintain title to the uranium feed, but also have property tax obligations for the uranium feed held in their accounts at USEC's facilities. For property tax purposes, utilities generally have acted consistently with what the Utilities Group believes is USEC's practice in allocating the amount of feed that resides in the states of Kentucky and Ohio on a 70-30 percent basis: 70 percent to Kentucky and 30 percent to Ohio. Thus, contrary to USEC's claims in the petition that there must be a one-for-one link between the feed and the LEU for the feed to be deemed owned by the utilities, USEC has had no problem allocating the feed between its facilities in different states for tax purposes and attributing the property tax responsibility to the utilities through allocation methodologies.

Consequently, USEC's position regarding the need to precisely trace batches of feed to a particular end product seems to vary depending on whether it suits USEC's needs in a particular context. USEC's position in this proceeding is inconsistent with commercial realities and

---

[10] *See Collated Rooting Nails; see also Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden*, 63 Fed. Reg. 40449 (July 29, 1998).

USEC's own practices, and the Department should reject it.

D. The Utilities Control The Production Process For LEU

The utilities require USEC to process the uranium to meet particular requirements by specifying the "product assays," product quantity, and tails assay. The product assays typically vary for each delivery, even for deliveries to the same utility. Also, the utilities provide to USEC feed with a specific country of origin, and the finished product provided to the utilities must contain the same origin, unless otherwise agreed to by the utilities. These specifications provided by the utilities are equivalent to designating the "quantity, type and size" of the product, which the Department has determined in prior cases was sufficient to demonstrate that the party contracting for the tolling controlled the production process."[11] Consequently, because USEC is contractually obligated to enrich LEU to meet customized specifications, the utilities control the production process for purposes of the Department's tolling test.[12]

E. The Utilities Control The Sale Of Low Enriched Uranium

Utilities control the disposition of uranium through all stages of production and sale. USEC's contracts with the utilities merely provide the price for enrichment services. The utilities incur all the costs related to the vari-

---

[11] *Flanges from India* at 68856.

[12] To the extent that USEC delivers to the fabricator something other than the product assays specified by the utilities, any blending conducted by the fabricator on USEC's behalf does not relieve USEC of its contractual obligations with the utilities.

ous stages of production required to manufacture LEU, including procurement of the uranium feed material, chemical conversion of uranium in the form of U_3O_8 to UF_6, and enrichment of the uranium isotope U_{235}. The utilities determine where and when the LEU is delivered.

F. Other Factors

USEC has cited as legal support only cases that preceded the Department's express change in practice in 1996; those cases therefore are not useful precedents. Also, USEC argues that it should be considered a producer and not a toller because enrichment accounts for 60 percent of the value of the LEU, even though the Department's own explanation of the tolling regulation expressly states that the percentage of production attributable to the subcontracted operation is irrelevant.[13] Consequently, these additional USEC arguments do not provide a basis for the radical change in practice USEC is advocating.

Further support for USEC's status as a toller is found in the report of the International Trade Commission in *Uranium from Russia, Ukraine, and Uzbekistan*. The report concluded that "[f]or its enrichment services, USEC operates basically as a toll producer, enriching natural UF_6 owned by utilities and others worldwide and charging a fee for the SWUs it expends in the process."[14]

In light of the above, there is no doubt that USEC is a toller and not the producer of LEU, the subject mer-

---

[13] 61 Fed. Reg. 7330.

[14] *Uranium from Russia, Ukraine and Uzbekistan*, Report to the Commission and Parties on Inv. Nos. 731-TA-539-C, E and F (Review) (May 25, 2000) at III-3.

chandise. Where the utilities contract with USEC to enrich their uranium feed, the utilities are the domestic producers of the resulting LEU.

III. USEC DOES NOT MANUFACTURE MERCHANDISE, IT SELLS A SERVICE

USEC is requesting that the Department restrict imports of enrichment services in order to protect USEC's business as an enrichment service provider. USEC's petitions therefore seek relief that is outside the scope of the antidumping and countervailing duty laws, which apply only to imports of merchandise when invoked by the domestic industry that manufactures the like product.

We have explained above why, under the Department's own regulations, USEC can be considered only a toll producer of the LEU on which it performs enrichment services. Further support for the view that USEC is performing only a service on such LEU, and not producing it, is found in the fact that the activity of enrichment is treated as a service in other relevant legal contexts.

A. USEC's Enrichment Contracts Are Services Contracts

There is no question that USEC's enrichment contracts are for the sale of services. The enrichment contracts themselves are entitled "Enrichment Services Contracts" or "Uranium Enrichment Agreements." The contracts specify that the service to be provided and the price to be paid is measured in terms of the quantity of work (*i.e.*, Separative Work Units or SWU). Under these contracts, USEC is paid only for the service it provides.

Even USEC characterizes its business as providing "uranium enrichment services." USEC's 2000 Annual Report, which it submitted as an exhibit to its petitions, states "[s]ubstantially all of USEC's revenue is derived from the sale of uranium enrichment services, denominated in SWU. Although customers may buy enriched uranium product without supplying uranium, most of USEC's contracts are for enriching uranium provided by customers."[15]

B. USEC Has Previously Agreed That The Uniform Commercial Code Does Not Apply To Its Contracts Because They Are Not Contracts For the Sale of Goods

At USEC's urging, the U.S. Court of Federal Claims has expressly found that USEC's enrichment contracts were for the sale of services, not goods, and therefore that the Uniform Commercial Code does not apply to those contracts. In *Barseback Kraft AB and Empresa Nacional Del Uranio S.A. v. The United States*, two foreign utilities had sued USEC (which at the time was still government-owned), claiming USEC had overcharged them for enrichment services.[16]

One of the issues raised in the case was whether the "good-faith limitation" imposed by Section 2-305(2) of the Uniform Commercial Code ("U.C.C.") constrained USEC's pricing authority. The court adopted USEC's arguments on this point, and held as follows:

---

[15] USEC 2000 Annual Report 19 (2000) (provided at Petition Vol. 5, Exh. 14).

[16] *Barseback Kraft AB and Empresa Nacional Del Uranio, S.A. v. The United States*, 36 Fed. Cl. 691 (1996).

> Initially, the Court agrees with the defendant [USEC] that U.C.C. § 2-305(2) does not limit the USEC's pricing discretion because the U.C.C. simply is inapplicable to the present contracts. . . . [T]he present contracts are for uranium enrichment services, as indicated by the title of the contracts themselves. This is also indicated by what the USEC provides to its customers under the contracts. Under the contracts, the individual utilities supply the USEC with the uranium. The USEC then enriches the uranium and returns to the customer uranium enriched to the customer's specifications. The price paid by the customer is based on the number of SWUs required to enrich the uranium to the customer's specifications. It is clear, then, from the process itself, that the customers are contracting for services, not goods, from the USEC. The U.C.C. does not apply to service contracts—it applies to the purchase of goods. U.C.C. § 2-102. Accordingly, it is clear that any protections afforded to parties by the U.C.C. do not apply to the present contracts).[17]

It is difficult to see how transactions that are not treated as sales of goods under the UCC could be deemed sales of merchandise under the trade remedy law.

C. Enrichment Service Is Not "Merchandise" Under The Customs Law

As discussed above, USEC's principal business is the sale of enrichment services—either provided by itself or by Russia. Enrichment service is not merchandise within the meaning of the trade law.

---

[17] *Id.* at 705.

All goods imported into the United States must be classified into the appropriate tariff category as found in the U.S. Harmonized Tariff Schedule. There is no tariff category for enrichment service, because it is not a good.

IV. BROKERING OF RUSSIAN SWU IS NOT PRODUCTION OF LEU

Although its arguments are not clear, USEC seems to suggest that its re-sales of the enrichment services associated with imported Russian LEU should be counted as part of USEC's "production" of LEU.[18]

In the petition, USEC stated that "it is not necessary that the enricher actually produce the enriched uranium itself." USEC goes on to cite as an example its brokering of Russian SWU:

> Petitioner, for example, delivers a large quantity of Russian enriched uranium produced through downblending of highly enriched uranium in return for payment in cash for the SWU component of the enriched uranium (which is calculated as if the enriched uranium was produced through enrichment, not downblending) and in kind for the feed material component.[19]

* * * * *

---

[18] The Department is familiar with USEC's role as the exclusive sales agent for the SWU associated with Russian LEU downblended from High Enriched Uranium (HEU).

[19] Memorandum from Steptoe & Johnson to U.S. Department of Commerce regarding "Enrichment of Uranium Involves the Production and Sale of 'Merchandise' Subject to the Antidumping and Countervailing Duty Laws," Dec. 4, 2000, at 10-11.

WEIL, GOTSHAL & MANGES LLP
767 FIFTH AVENUE - NEW YORK, NY 10153-0119
(212) 310-8000
FAX: (212) 310-8007

[Text Omitted]

STUART M. ROSEN
DIRECT LINE (212) 310-8640

December 20, 2000

Inv. Nos. A-427-818, C-427-819,
A-412-820, C-412-821, A-428-828,
C-428-829, A-421-808, and C-421-809
Total Pages: 80
Investigation
Enforcement II/Office VI

PUBLIC DOCUMENT

VIA HAND DELIVERY

The Honorable Norman Y. Mineta
Secretary of Commerce
Attn: Import Administration
Central Records Unit, Room 1870
U.S. Department of Commerce
14th Street & Constitution Avenue, N.W.
Washington. D.C. 20230

Re: Low Enriched Uranium From France, Germany, The Netherlands, And The United Kingdom, Inv. Nos. A-427-818, C-427-819, A-412-820, C-412-821, A-428-828, C-428-829, A-421-808, and C-421-809: Comments and Information On The Issue Of Industry Support

Dear Secretary Mineta:

Pursuant to 19 U.S.C. §§ 1671a(c)(4)(E) and 1673a(c)(4)(E), we are submitting to the Department of Commerce (the "Department") the following "comments or information on the issue of industry support," * * *

* * * * *

> any protections afforded to parties by the U.C.C. do not apply to the present contracts.[14]

In short, *according to USEC itself*, enriching uranium is the provision of a service, not the production of a good, and a federal court plainly relied upon these representations in rendering its determination. However, despite the obvious relevance of the precedent, USEC failed to bring the case to the Department's attention.[15]

There is nothing unique about the contracts involved in *Barseback* that would confine the argument to the facts of that case. As is noted in the *Barseback* Memorandum, the foreign contracts there at issue 'are identi-

---

[14] *Id.* at 705 (emphasis added), *aff'd on other grounds*. 121 F.3d 1475 (Fed. Cir. 1997); *see also Kansas Gas & Elec. Co. v. Westinghouse Elec. Corp.*, No. 89-1738, 1990 WL 86223 at *2 (4th Cir. June 6, 1990) (stating in a contract dispute case taht "the Department of Energy was the principal supplier of enrichment services to the United States utilities, including KGE").

[15] To the contrary, the Petition raises a U.C.C. argument by stating that USEC's enrichment services "contract also includes standard disclaimers of implied warranties of the type applicable to sales of goods under the Uniform Commercial Code." Its representations that the U.C.C. is in any way applicable is inconsistent with the representations made in *Barseback*. Moreover, its statement also is irrelevant to the issue, since an implied warranty also can be disclaimed for the provision of services.

cal to those entered into with domestic uranium enrichment customers in all material respects."[16] In fact, USEC's predecessor has been entering into similar contracts since at least 1969. All of these contracts were expressly for the provision of services, not goods.[17] So far as Respondents are aware, the Petition is the first time over this entire period in which USEC stated that its enrichment services contracts are for the sale of goods, not services.

Moreover, in the prospectus for its initial public offering, which was filed with the U.S. Securities and Exchange Commission, USEC consistently informed the investing public that it was "the world leader in the production and sale of uranium fuel enrichment services for commercial nuclear power plants."[18] Not once in this

---

[16] *Barseback* Memorandum at 6, *attached as* Exhibit 1.

[17] See *id.* at 15 n.15 (noting that from 1969 until 1972, there was a "standard contract," known as the "Agreement for Furnishing Uranium Enrichment Services (Requirements)", that from 1973 to 1977, there was "a new standard contract, entitled 'Agreement for Furnishing Uranium Enrichment Services (Long-Term, Fixed Commitment)', and that beginning in 1978, there was "a third standard contract, entitled 'Contract for Furnishing Uranium Enrichment Services (Adjustable, Fixed-Commitment)'").

[18] Prospectus of USEC, Inc. (July 22, 1998), *attached as* Exh. 1 to volume V of the Petition, at 5 ("USEC, a global energy company, is the world leader in the production and sale of uranium fuel enrichment services for commercial nuclear power plants."); *id.* at 32 (USEC, a global energy company, is the world leader in the production and sale of uranium fuel enrichment services for commercial nuclear power plants, with approximately 75% of the North American market and 40% of the world market."); *id.* at 52 ("The Company's goal is to continue to be the world's leading supplier of uranium fuel enrichment services and to diversify over time into related strategic businesses that will contribute to the Company's growth and profitability.").

document of more than ninety pages does USEC suggest that its enrichment activities on behalf of utilities is anything other than the provision of a service.

Moreover, in keeping its books, USEC always reports its results in terms of sales of SWUs—not of LEU. In its most recent Form 10-K filing, USEC states that with regard to utility-provided uranium, its "revenue is derived from sales of uranium enrichment services to customers who supply uranium to be enriched."[19] When processing uranium provided by utilities, USEC tracks its revenue from enrichment services and its inventory on the basis of SWUs, and not based upon a measure applicable to goods. A SWU, however, is not a tangible product: it is a calculation based on a mathematical equation that measures the amount of work done to isotopically enrich uranium. Because SWUs have no physical embodiment, they can only be construed as a measure of the services provided, and not as a good. Thus, as is noted in the *Barseback* Memorandum, the very fact that USEC sells intangible SWUs rather than tangible LEU shows that a service, rather than a good, is provided to utilities that contract for enrichment.[20]

---

[19] *USEC l0-K for Fiscal Year Ended June 30, 2000* at 2; *accord id.* at 19 ("Substantially all of USEC's revenue is derived from the sale of uranium enrichment services, denominated in SWU. Although customers may buy enriched uranium product without supplying uranium, most of USEC'S contracts are for enriching uranium provided by customers."); *accord* Prospectus of USEC, Inc. at 33 ("Substantially all of the Company's revenue is derived from the sale of uranium enrichment services, denominated in SWU.").

[20] *See supra* note 12 and accompanying text.

Furthermore, for more than 45 years all three branches of the U.S. Government have treated USEC (and its predecessors) as a provider of services.

- **Congress.** Congress first allowed utilities to own uranium in 1964, when it passed the Private Ownership of Special Nuclear Materials Act, but required that utilities send all uranium to the Atomic Energy Commission (the "AEC"), USEC's predecessor, for "toll enrichment" services.[21] Section 161(v) of the Atomic Energy Act directed that the AEC "shall establish criteria in writing setting forth the terms and conditions under which *services* provided under this subsection shall be made available." Section 1202 of the Energy Policy Act of 1992 states that USEC was created for, among other things, the purpose of helping to "maintain a reliable and economic domestic source of *uranium enrichment services*."[22] Thus, Congress has always viewed USEC's purpose as providing enrichment services for uranium owned by others, a role that USEC continued to play after it was privatized.[23]

---

[21] *See Private Ownership of Special Nuclear Materials Act*, Pub. L. 88-489, 78 Stat. 602 (1964).

[22] Energy Policy Act, Pub. L. 102-486, 106 Stat. 2776, 2925 (1992) (emphasis added). Section 1101 of the Energy Policy Act imposes a special assessment on domestic utilities based on the "total amount of separative work units such utility has purchased" from the DOE, thus making clear that Congress understood that the utilities always have purchased enriching services sold as SWUs from the enricher, not LEU. 42 U.S.C. § 2247g-l(c).

[23] *See Barseback*, 36 Fed. Cl. at 703 ("Congress was obviously aware that at the time the Act would take effect, there were existing contracts

- **The Executive Branch.** As is noted in the *Barseback* Memorandum, the DOE has published a series of "Uranium Enrichment Services Criteria" in the Federal Register,[24] and published regulations regarding the same.[25] In all these regulations, the U.S. government has referred to the provision of "enrichment services," thereby making clear that for at least 35 years, the utilities have been consistently contracting for enrichment services.

- **Judicial Precedents.** Numerous Federal Courts (in addition to the court in *Barseback*, discussed *supra*), evaluating various contractual and other claims, have treated USEC or its predecessors as providing 'enrichment services." For example, in *Huffman v. Western Nuclear, Inc.*, the U.S. Supreme Court, when evaluating the propriety of lifting restrictions on the importation of foreign uranium, repeatedly referred to contracts for "enrichment services."[26] Numerous

---

for uranium enrichment services and the USEC would be assuming responsibility for these contracts.").

[24] *Barseback* Memorandum at 8-11, *citing* 31 Fed. Reg. 16,479 (1966); 35 Fed. Reg. 13,546 (1970); 36 Fed. Reg. 4,562 1971); 38 Fed. Reg. 12,180 (1973); 39 Fed. Reg. 38,016 (1974); 43 Fed. Reg. 27,886 (1978); 51 Fed. Reg. 3624-32 (1986); 51 Fed. Reg. 27,134 (1986), *attached as* Exhibit 1.

[25] *Barseback* Memorandum at 10; citing 10 C.F.R. § 762.5 (1986).

[26] *Huffman v. Western Nuclear, Inc.*, 486 U.S. 663, 667 (1988) (noting that utilities were "bound by long-term contracts to purchase enrichment services"); *id.* at 668 (noting that the DOE had engaged in rulemaking regarding "restriction of enrichment services"); *id.* at 669 (same).

> cases litigating section 161(v) of the Atomic Energy Act's cost recovery provisions, or involving the government's right to retroactively recover decontamination and decommissioning costs from utilities, have referred to USEC or its predecessors as providing "enrichment services."[27]

In short, regardless of the context, everyone—including USEC itself—has for decades uniformly recognized that the enrichment of uranium provided by the utilities is a service. Petitioners' assertion here that "[e]nrichment is not a 'service'" was invented solely for the Petition, and should be rejected by the Department.

* * * * *

the Petition, "[t]itle to the LEU transfers from the enricher to the utility when the LEU is delivered to the

---

[27] *See, e.g., Huffman*, 486 U.S. at 667-69; *Florida Power & Light Co. v. United States*, 198 F.3d 1358, 1362 (Fed. Cir. 1999) (citing "Article IV of the standard *enrichment services* contract") (emphasis added); *Consolidated Edison Co. of New York v. United States, Department of Energy*, No. 99-1464 2000 WL 1,779,085 (Fed. Cir. 2000)(noting that the recovery of decontamination costs "involves computations based on past use of Government *enrichment services*") (emphasis added); *Yankee Atomic Elec. Co. v. United States*, 112 F.3d 1569, 1572 (Fed. Cir. 1997) (noting that "[b]eginning in 1963, Yankee Atomic purchased the *uranium enrichment (or separation) services* from the Government through a series of contracts. . . . Although these contracts varied somewhat from one to another, they each stated that the price paid by Yankee Atomic for the *enrichment services* would be based on 'established Commission pricing policy.'") (emphasis added); *id.* (noting that foreign companies, USEC's prime competitors, also provide "*enrichment services*") (emphasis added); *id.* at 1583 (noting that "Yankee was to pay a fixed price per separative work unit, the common measure by which uranium *enrichment services* are sold.") (emphasis added).

utility. Prior to that point, the enricher holds title to the LEU (including work in process)."[37]

Once again, USEC makes statements in the Petition that are completely contradicted by USEC's own representations in other contexts. In its Form 10-K filed with the Securities and Exchange Commission, USEC has this to say about title to uranium it is enriching:

> *Generally, title to uranium provided by customers for enrichment purposes does not pass to USEC.* Uranium provided by customers for which title does pass to USEC is recorded on the balance sheet at estimated fair values of $101.7 million at June 30, 1999 and $40.2 million at June 30, 2000, with corresponding liabilities in the same amounts representing uranium owed to customers. *In addition, USEC holds uranium for enrichment and storage purposes with estimated fair values of $829.7 million at June 30, 1999 and $682.2 million at June 30, 2000, for which title is held by customers and others.*[38]

Thus, while USEC held title to $40.2 million in uranium on June 30, 2000 provided to it by utilities, it also held more than $680 million—*some seventeen times as much*—in inventory for utilities and for others. Clearly (and contrary to USEC's statements in the Petition), USEC's general practice is *not* to take title to uranium entrusted to it.

Moreover, USEC has taken the exact opposite position in the context of determining whether it is required to pay state property taxes. In a letter to its "enrich-

---

[37] Petition vol. 1 at 1-13.

[38] USEC 10-K at 56 (emphasis added).

ment customers," USEC analyzed the tax implications of the property tax systems of Ohio and Kentucky, the two states where it maintains inventories of uranium provided by its customers for enrichment. As the USEC Letter notes, "[b]oth Ohio and Kentucky require that every owner of tangible personal property file an annual property tax return to report all property owned in the state." USEC flatly informed its customers that while it was required to "report all the property that it owns at [its two plants,] and will pay property tax accordingly," it was not required to pay property taxes on work in process inventories of uranium provided by a utility for enriching because each utility's "feed inventory" remains the "customer's feed."[39] Thus, while USEC pays property taxes on its own uranium inventory, it looks to the utilities to pay the property tax on uranium they provide to USEC for processing because the utilities continues to hold title to that material. No other conclusion is possible consistent with the tax consequences that attach to ownership.

The USEC Letter also refutes the Petition's oft-repeated claim that USEC somehow has title because the utility does not maintain ownership in a "specific, separately identifiable quantity of uranium," and thus cannot be viewed as having retained title to the material provided to USEC.[40] As the USEC Letter notes, the fungi-

---

[39] Letter from USEC to Enrichment Customers (Dec. 18, 2000) at 1-2 (the "USEC Letter"), *attached as* Exhibit 2; *accord id.* at 2 stating that because the uranium remains the property of the utility, the taxes remain "your [*i.e.*, the utility] property tax obligations").

[40] Petition vol. 1 at 1-11 n.12; *accord id.* tab A at 10-11 (arguing that "the commercial activities of an enricher differ significantly from the normal commercial activities of a 'toller' " because "enrichers, unlike tollers, do not enrich the specific raw material provided by the customer").

ble nature of the product is no barrier to allocating ownership of inventory. The USEC Letter concludes:

> As you may be aware, UF_6 is fungible within USEC's plant operations. Although we maintain detailed accounting of your feed inventory, it is not possible to assess which customer's feed resides in each state. Our records indicate that approximately 70% of all UF_6 is used in Kentucky and that approximately 30% is used in Ohio, and therefore each customer's feed balance will be deemed to be split by those percentages. USEC will have these allocation percentages verified by a third party. We will provide you with your feed balance as of December 31, 1998.[41]

In short, USEC's treatment of property taxes is completely inconsistent with its position that it, rather than the utilities, maintains title to all uranium given to it for processing. The fungibility of uranium is no more a barrier to assessing ownership in the trade context than it is when property taxes are involved. The fact that the utility does not expect the return of the "specific" uranium it provides has no bearing, and is simply a reflection of the fungible nature of the product and the economics of the industry, not a desire of the utility to give up its ownership interest to USEC. The reality is that the physical identity of the feedstock is irrelevant in this

---

In this regard, we note that USEC urged precisely the opposite argument in the *Barseback* case, where it argued that "[b]ecause uranium is fungible, customers do not receive from USEC the same uranium they deliver," thereby supporting its argument that when "customers receive enriched uranium from USEC, they have contracted only for the enrichment services associated with such uranium." *Barseback* Memorandum at 26, *attached as* Exhibit 1.

[41] USEC Letter at 3-4, *attached as* Exhibit 2.

business; to elevate it to the status of a *sine qua non* in applying the Department's carefully crafted tolling/sub-processor principles is to ignore that reality.

2. USEC Does Not Control The Ultimate Use Or Sale Of The Uranium It Processes For Utility Customers

With regard to the control element, Petitioner claims that "the utility has no control over the process used to produce the LEU that the utility receives" because "the enricher determines this [the tails] assay based on its own operational requirements and input costs."[42] According to the Petition, because USEC "chooses" how to meet the utility requirements, it should be considered the "producer" of the LEU.

* * * * *

[42] Petition vol. 1, tab A at 9-10.

UNITED STATES COURT OF FEDERAL CLAIMS

No. 95-415C
(Judge Bruggink)

BARSEBACK KRAFT AB AND EMPRESA NACIONAL DEL URANIO, S.A., PLAINTIFFS

v.

THE UNITED STATES, DEFENDANT

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Defendant moves for summary judgment pursuant to Rule 56(b) because no material facts are in dispute, and Defendant is entitled to judgment as a matter of law.

STATEMENT OF THE ISSUE

Whether this Court should excise from the Contracts the unambiguous provision governing the pricing of uranium enrichment services and substitute in its place a pricing policy whose statutory basis Congress has repealed and that is contrary to the policy Congress has prescribed.

STATEMENT OF THE CASE

Nature Of The Case

Plaintiffs filed their complaint on June 22, 1995. In it, they contend that the United States, acting through the United States Enrichment Corporation ("USEC"), breached two virtually identical Uranium Enrichment Services Contracts (Utility Services Contracts) (the "contracts"), which were concluded in the mid-1980's

between Plaintiffs and the United States acting through the Secretary of Energy ("DOE"), * * *.

* * * * *

II. This Court Should Not Impose A "Market Price"

In Count II of the Complaint, Plaintiffs argue that this court should impose a "market price" upon USEC's enrichment services. Plaintiffs argue that, if "established DOE pricing policy" were deemed to have been eliminated by the repeal of section 161v, the price term of the Contracts would be "open," and, therefore, under the Uniform Commercial Code, this Court should establish a "reasonable price" based on what Plaintiffs assert is the "market price" for enrichment services. (Complaint ¶¶ 60-68.) For several reasons, this alternative argument is also wrong.

A. The Uniform Commercial Code Is Not Applicable

The U.C.C. does not apply in government contract cases. *GAF Corp. v. United States*, 932 F.2d 947, 951 (Fed. Cir. 1991), *cert. denied*, 502 U.S. 1071 (1992) ("Congress has not applied the Uniform Commercial Code to federal contracts. . . . The Claims Court may not do by judicial fiat what Congress has not done by legislation."). Moreover, Article 2 of the Uniform Commercial Code governs only contracts for the sale of goods; it does not govern contracts for services. *U.C.C.* § 2-102. The contracts are, as their very title indicates, "Uranium Enrichment *Services* Contracts," and the procedures under the Contracts support the conclusion that the Contracts are not contracts for goods. When Congress enacted the Private Ownership of Special Nuclear Materials Act,

Pub. L. No. 88-489, Aug. 26, 1964, it permitted utilities to own uranium; prior to this legislation, enriched uranium could only be leased from the government. Under the Contracts, customers deliver natural uranium to USEC (formerly to DOE) and receive in return uranium enriched to their specifications. Because uranium is fungible, customers do not receive from USEC the same uranium they deliver; the price that they pay is computed based solely on the number of SWU's needed to enrich natural uranium to the level they desire. There is no charge for the uranium itself. Thus, although customers receive enriched uranium from USEC, they have contracted only for the enrichment services associated with such uranium. Accordingly, the U.C.C. is inapplicable.

B. Even If the U.C.C. Were Applicable, There Is No Price Gap

The Plaintiffs claim that, under U.C.C. § 2-305(2), where the price term of a contract is open, the price must be set "in good faith," and this standard is met by the application of a "market price." The problem for Plaintiffs is that the price term in the Contracts is simply not open. "[N]ot every contract which does not specify an exact price is subject to modification under § 2-305. When the contracts stipulate that the price will be set according to a particular standard, section 2-305 has no role to play." *Kellam Energy, Inc. v. Duncan*, 668 F. Supp. 861, 877 (D. Del. 1987). This is exactly the * * *.

* * * * *

[Logo Omitted]
USEC

November 19, 1998

[REDACTED]

Dear [REDACTED]

The enclosed property tax information has been compiled for USEC's enrichment customers and is being provided for your information. Included in the packet are: a copy of the letter sent to USEC enrichment customers, a listing of property tax contacts, two memorandums regarding the "work in progress" exemption and tax forms for Ohio and Kentucky.

If you have any questions, please use me as your contact point. I can be reached by telephone at (301) 564-3407 or by facsimile at (301) 564-3207.

Sincerely,

/s/ BRYAN DEOMS
BRYAN DEOMS
Customer Service Representative

Enclosures

Contract File ..... ☐
Vault ..... ☐
[ILLEGIBLE] Center .. ☐
Chron. Binder ..... ☐
Quote Book ..... ☐
CC: _____

6903 Rockledge Drive, Bethesda, MD 20817-1818
Telephone 301-564-3200 Fax 301-564-3201
http://www.usec.com
Offices in Livermore, CA Paducah, KY

Portsmouth, OH Washington, DC

Letter to USEC Enrichment Customers

The purpose of this letter is to provide you with our understanding regarding certain aspects of the Kentucky and Ohio property tax as imposed on uranium inventories for enrichment at USEC Inc.'s two gaseous diffusion plants (GDP's). Both Kentucky and Ohio require that every owner of tangible personal property file an annual property tax return to report all property owned in the state as of January 1. Neither Ohio or Kentucky uses a rolling average inventory method, except for "manufacturers" and "merchants." The Kentucky property tax return is due on May 15, and the Ohio property tax return is due on April 30, although the Ohio dates are subject to modification for certain tax-payers who have fiscal year-ends, rather than calendar year-ends.

Property tax payment schedules and tax rates vary between the two states. In Ohio, the taxpayer must pay one half of the tax due at the time that it files its tax return. The second half payment is due on September 20. No payment is due in Kentucky until the end of the year, when the state sends a tax bill to the taxpayer. The tax rates for Kentucky and Ohio are .05% and approximately 1.1%, respectively, of the fair market value of the raw goods inventory in place on January 1.

USEC will begin to pay property tax in both Ohio and Kentucky effective January 1, 1999. As required by law, USEC will report all the property that it owns at the two GDP's and will pay property tax accordingly. USEC does not intend to report any UF_6 to which it does not hold legal title. We have attached the 1998 property tax forms for both Ohio and Kentucky to provide you with more information about both states' property tax rules and procedures. We have been advised that the 1999

property tax forms will be available early in 1999 and may be obtained either by calling the appropriate tax office or by viewing the appropriate internet site.

We have done extensive work with our corporate Tax Department in understanding the Ohio and Kentucky property tax. As a part of this review, our corporate Tax Department has advised that Ohio tax law supports USEC's customers treating UF_6 which it owns (as opposed to leases) as exempt property for purposes of the Ohio property tax. We have enclosed a summary memorandum which discusses this important issue. We have also enclosed a memorandum covering leased feed material.

Although we are pleased to be able to share this information regarding the Kentucky and Ohio property tax with you, USEC is prohibited from providing tax, legal, or accounting advice to its customers. We strongly encourage you to engage your own property tax representatives, consultants, or counsel in Ohio and in Kentucky if you consider your firm's tax liability substantial enough to warrant such an engagement. We would be pleased to refer you to law firms and accounting firms with whom we are familiar in both states.

As you may be aware, UF_6 is fungible within USEC's plant operations. Although we maintain detailed accounting of your feed inventory, it is not possible to assess which customer's feed resides in each state. Our records indicate that approximately 70% of all UF_6 is used in Kentucky and that approximately 30% is used in Ohio, and therefore each customer's feed balance will be deemed to be split by those percentages. USEC will have those a location percentage verified by a third party. We will provide you with your feed balance as of De-

cember 31, 1998, as soon as our quarterly feed report is completed. It is our understanding that the ending balance on December 31 is typically used to satisfy the January 1 reporting obligation.

USEC continues to work to manage the property tax liabilities for the property located at the two GDP's. At this time, we are exploring various methods of reducing your property tax obligations, including having both GDP's designated as "foreign trade zones". It is our understanding that the Ohio property tax on inventory is not imposed on property located in a foreign trade zone.

[FOR OFFICIAL FILE]

FRIED, FRANK, HARRIS, SHRIVER & JACOBSON
1001 PENNSYLVANIA AVENUE, NW
SUITE 800
WASHINGTON, D.C. 20004
(202) 639-7000

WEIL, GOTSHAL & MANGES LLP
1615 L ST., N.W.
SUITE 700
WASHINGTON, D.C. 20036
(202) 682-7000

[December 26, 2000]

Inv. Nos. A-427-818, C-427-819,
A-412-820, C-412-821, A-428-828,
C-428-829, A-421-808, and C-421-809
Total Pages: 21
Pending Investigation
Enforcement II/Office VI

PUBLIC DOCUMENT

VIA HAND DELIVERY

The Honorable Norman Y. Mineta
Secretary of Commerce
Attn: Import Administration
Central Records Unit, Room 1870
U.S. Department of Commerce
14th Street & Constitution Avenue, N.W.
Washington, D.C. 20230

Re: Low Enriched Uranium From France, Germany, The Netherlands, And The United Kingdom, Inv. Nos. A-427-818, C-427-819, A-412-820, C-412-821, A-428-828, C-428-829, A-421-808, and C-421-809: Information And Comments On The Issue Of Industry Support

Dear Secretary Mineta:

This filing is provided on behalf of Eurodif S.A. (a provider of enrichment services in France), COGEMA (a seller thereof), and COGEMA, Inc. (a seller of enrichment services in the United States and, in that connection, an importer of low enriched uranium ("LEU") that has been enriched in France), as well as Urenco Deutschland GmbH, Urenco Nederland B.V., and Urenco (Capenhurst), Ltd. (providers of enrichment services in Germany,

* * * * *

[Logo Omitted]
USEC

December 8, 1997
Case No. A-834-802
Suspension Agreement (Corrected Version)

PUBLIC DOCUMENT

BY HAND DELIVERY

The Honorable William M. Daley
Secretary of Commerce
U.S. Department of Commerce
14th Street and Constitution Ave., N.W.
Attn: Central Records Unit
Room B-099
Washington, D.C. 20230

Re: Uranium from Kazakhstan

Dear Secretary Daley:

At the request of the U.S. Department of Commerce (the "Department"), the United States Enrichment Corporation ("USEC") submits the following comments on the recently initialed amendment to the above-captioned suspension agreement.

USEC strongly supports efforts by the Department to include provisions in the various suspension agreements to permit U.S. converters, enrichers and fabricators to process CIS origin uranium for foreign customers, even where such uranium could not have otherwise been imported for sale or consumption in the United States. To date, USEC has not objected to any of the amendments

made to the suspension agreements to permit such activities, provided they were clearly tailored to ensure that the imported material did not adversely affect other segments of the U.S. nuclear fuel industry.

USEC has followed with interest the requests submitted by the Government of Kazakhstan and others regarding the scope of the authority granted under the reexport provisions of the Kazakhstani suspension agreement. Based on the information in the public record, the requests appear to center on unique transactions. Accordingly, USEC has seen no reason to object to these transactions thus far.

The proposed amendment, however, appears to grant authority beyond the authority needed for these unique transactions and raises a number of fundamental concerns for USEC (especially when compared to the reexport provisions of the amendment to the Russian suspension agreement). First, for reasons stated more fully below, the increase in the amount and duration of imports authorized under the amendment, coupled with the relaxation of the requirement that specific end-users be identified in advance for all temporary imports of uranium, could be used in a manner that would have an adverse impact on USEC and others in the U.S. nuclear fuel industry.

Second, notwithstanding the prohibition in the amendment against imports for "sale . . . in the United States", the authority to import uranium into the United States without identifying an end-user in advance could be used by a broker or processor to make such sales. Third, the amendment's relaxation of the end-user rules and the authority granted in the amendment for swapping of imported uranium will significantly impair the

Department's ability to effectively track the uranium imported. Finally, it is not clear how the amendment will be interpreted in light of conflicting provisions in the Russian suspension agreement.

We recognize that there is a legitimate need for a clarification of the scope of the reexport provisions of the Kazakhstan suspension agreement, and we support the Department's efforts to provide such clarification. However, while we have no reason to believe that any of the parties who have requested this clarification intend to use the reexport authority in a manner that could be harmful to other segments of the nuclear fuel industry, we believe there are potential loopholes and inconsistencies that could lead to such problems, as more fully described below. These matters should be addressed before the Department finally agrees to the amendment.

1. Adverse Consequences on U.S. Industry

USEC's concerns about the impact of the amendment on the U.S. industry are rooted in the manner in which transactions in uranium are conducted in the nuclear fuel industry. The enriched uranium used to fabricate nuclear fuel assemblies typically is not provided by the fabricators themselves. Rather, utilities arrange for enriched uranium to be provided to fabricators by USEC and other enrichers. Because enriched uranium is considered a fungible commodity, the uranium delivered by an enricher for a utility is typically not the same uranium used to fabricate fuel for that utility. In fact, a fabricator may use its own inventory of enriched uranium or enriched uranium delivered by other utilities to partially or completely fabricate the fuel bundles, pending receipt of the utility's enriched uranium. This use of inventory is perfectly legitimate, but it never shows up in the docu-

mentation of the final delivery to the utility, so long as either (i) the utility's enriched uranium is delivered before the fabricated fuel is delivered by the fabricator or (ii) if the enriched uranium arrives after delivery of the fabricated fuel, the transfer documentation (the DOE/NRC Form 741) is corrected to reflect the origin of the utility's enriched uranium instead of the origin of the enriched uranium in the fuel. Indeed, because all enriched uranium is treated as fungible, the fabricator can legitimately report that the fuel delivered to the utility contains the enriched uranium delivered by the enricher for the utility, even though in reality the utility's enriched uranium merely was used to replenish the fabricator's inventories. From the foregoing explanation, it should be clear that the size of a fabricator's inventory determines the length of the time the fabricator can do without a utility's uranium in the fabrication of assemblies for that utility. With a large enough inventory, the fabricator can permit utilities to defer the delivery of enriched uranium until immediately before or even after the delivery of the assemblies to the utility. In the nuclear fuel business, this has real economic value to utilities, because the longer utilities can defer the delivery of enriched uranium to the fabricator, the longer they can defer purchases of uranium, conversion and enrichment from U.S. and other non-CIS suppliers. Because most suppliers contract with utilities on the basis of needs within fixed periods of time (with prices varying according to the time period in which the purchase occurs), the ability to defer a purchase means that the purchase can be shifted into years in which prices are lower, or years in which the utility is not committed to purchase from U.S. suppliers (thereby creating an artificial leverage over the suppliers in price negotiations for uncommitted

years and reducing the suppliers' revenues in committed years).

It is this aspect of the nuclear fuel business which makes it necessary to require an end-user certificate for temporary imports. End-user certificates effectively limit an importer's ability to keep enriched uranium in inventory for an indefinite period. If material is dedicated to a specific transaction and is exported within the specified period of time, it cannot remain in inventory for use in the manufacture of other assemblies or otherwise be used to create leverage over U.S. suppliers.

2. Domestic Sales

It should also be clear from the foregoing explanation that enriched uranium *per se* is generally not sold within the United States. Instead, utilities typically obtain nuclear fuel by purchasing natural uranium and conversion, enrichment and fabrication services separately. In the past, USEC has not objected to the reexport provisions included in the various suspension agreements because the end-user certificate requirement served to ensure that the imported material was used to obtain services from U.S. converters, enrichers and fabricators. In such transactions, we assume the foreign utility holds title to the uranium and is only providing it to the U.S. processor so that the processor can perform a value-added service.

Under the amendment, however, a processor (such as a fabricator) or a broker could import material for its own account and hold it pending identification of an end-user (*i.e.*, after import of the material) to whom the uranium could be provided. In this scenario, the processor or broker, not the utility, would actually be the supplier of the uranium. If the processor or broker receives any form of

consideration (for example, money or other uranium) in exchange for the uranium (including the enrichment component of the uranium), it would appear that the processor or broker has sold the material to the utility. Further, if title to the material transfers to the utility while the material is in the United States, that also suggests that a sale has occurred.

The amendment states without qualification that material imported under the reexport provision is not for "sale . . . in the United States." From USEC's perspective, a processor or broker who imports material for its own account and then, in consideration for either money or equivalent material, supplies the material to a foreign customer who is not identified until after the material is in the United Stares is making a sale of the material in the United States. The fact that the material will ultimately be exported is irrelevant, since it is consumed in the United Stares in a manufacturing process prior to export. Moreover, nothing in the amendment suggests that the amendment's prohibition on sales in the United States does not apply to sales of material for export.

3. Inability to Track

As preceding sections indicate, uranium is a difficult commodity to track. Once it enters a processor's inventory, it generally is commingled and loses any separate identity. Indeed, once made part of the processor's inventory, it may be converted to other chemical forms to make it more suitable for future use by the processor. Further, its characteristics (chemical form and assay) may change during the processing of the material (e.g., conversion from UF_6 to UO_2).

Processors track material by country of origin, but these records reflect aggregate totals of each origin within the processor's inventory. The origin ascribed to a particular quantity of physical enriched uranium (*i.e.*, uranium in a container or in processing machinery) may actually change over time. This ability to change origins is absolutely essential to ensure the efficient operation of a nuclear fuel business. For example, Russian SWU is typically delivered to U.S. utilities by exchanging Russian enriched uranium for natural uranium supplied by the utility. As a result of this exchange, the Russian enriched uranium's natural uranium component is treated as if it were the non-Russian natural uranium delivered by the utility, while the non-Russian natural uranium delivered by the utility is deemed to acquire a Russian origin.

This same flexibility on origins, however, makes it difficult to track the actual use or disposition of imported uranium. For example, a quantity of imported Kazakhstani material in a processor's inventory could be "reexported" by the simple expedient of locating an equivalent quantity of material outside the United States and then swapping the origin designation of each quantity of material. The material remaining in the processor's inventory would now be treated as having other than Kazakhstani origin. Effectively tracking the further disposition of this material would be virtually impossible, however, particularly if the swap involved an exchange of Kazakhstani origin for U.S. origin (given the large quantities of U.S. origin material in processor inventories in the United States.)

USEC does not advocate unnecessary restrictions on the operations of processors, who must be free to commingle

and use any material placed in their inventories. With an end-user requirement, however, the Department at least has the assurance that the addition of the material to the processor's inventory is necessary to accommodate work that the processor must perform for a specific foreign utility and that the processed material will be exported within a specific period of time. Further, by excluding or limiting swaps, the Department could have greater assurance that it could track the disposition of material under the amendment and preclude adverse effects on the U.S. industry.

4. Inconsistency with the Russian Suspension Agreement

Aside from USEC'S concerns about the impact of the amendment on the U.S. industry, USEC is also concerned about the lack of coordination of this amendment with the Russian suspension agreement. As pointed out in USEC's comment of November 5, 1997 regarding certain uranium oxide powder sought to be imported from Kazakhstan, uranium enriched in Russia—wherever located—is still considered to be Russian origin uranium under the Russian suspension agreement and can only be imported if (i) matched with sales of equivalent enriched uranium or (ii) covered by a re-export certificate issued by the Russian Federation pursuant to the reexport provisions of the Russian suspension agreement.

Because the uranium suspension agreements constitute separate proceedings, the Kazakhstani agreement—no matter how amended—simply does not create an exception to the Russian suspension agreement. Rather, an entry of enriched uranium from Kazakhstan which was enriched in Russia would be subject to the requirements of both agreements. In other words, even if the Kazakh-

stani government issued a re-export certificate to cover the importation of Kazakhstani origin uranium enriched in Russia, the material could not be imported unless the Russian government also issued a re-export certificate covering the enriched material. Further, neither the enriched uranium, nor its enrichment component could be swapped for other enriched uranium or SWU or sold in the United States, unless such swap or sale was matched with a swap or sale of an equal amount of U.S. origin enriched uranium or SWU.

* * * * *

STEPTOE & JOHNSON
ATTORNEY AT LAW

1330 Connecticut Avenue, NW
Washington, DC 20036-1795

Telephone 202-429-3000
Telephone 202.429.3902
Facsimile 202-429-3902
www.steptoe.com

Sheldon E. Hochberg
202.429.6218
shochber@steptoe.com

Inv. Nos. A-427-818, C-427-819-412-820, C-412-821, A-428-828, C-428-829, A-421-808 & C-421-809
Total No. of Pages: 30
Pending Investigation
Office 6/ Group 2

PUBLIC DOCUMENT

December 27, 2000

VIA HAND DELIVERY

The Honorable Norman Y. Mineta
Secretary of Commerce
Attn: Import Administration
U.S. Department of Commerce, Room 1870
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Re: Low Enriched Uranium From France
Low Enriched Uranium From, Germany,
Low Enriched Uranium From the Netherlands
and
Low Enriched Uranium From the United Kingdom

Dear Secretary Daley:

On behalf of USEC Inc. and United States Enrichment Corporation (collectively, "USEC"), we offer the following brief rebuttal to the points raised by the Respondent in * * *.

[Logo Omitted]

April 8, 1998
Case No. A-834-802
Total No. of Pages: 10
Suspension Agreement

PUBLIC DOCUMENT

BY HAND DELIVERY
The Honorable William M. Daley
Secretary of Commerce
U.S. Department of Commerce
14th Street and Constitution Ave., N.W.
Washington, D.C. 20230
Attn: Import Administration
Central Records Unit
Room B-099

Re: Uranium from Kazakhstan

Dear Secretary Daley:

This letter responds to the public version of the March 24, 1998 letter of the Government of Kazakhstan ("GOK")[1] regarding a proposed transaction under Appendix A of the Suspension Agreement between the United States and the GOK (the "Suspension Agreement").[2]

---

[1] Letter from Thomas B. Wilner, Shearman & Sterling to the Hon. William M. Daley (March 24, 1998) (the "Appendix A Letter").

[2] Agreement Suspending the Antidumping Investigation on Uranium from Kazakhstan, 57 Fed. Reg. 49,222 (Oct. 30, 1992), as amended.

USEC supports efforts by the Department to afford the GOK and other countries that have entered into suspension agreements in the uranium cases the opportunity to continue exporting their products to the United States where such exports are consistent with applicable U.S. law and the international obligations of the United States. Accordingly, we did not object to the various amendments made to the suspension agreement with the Russian Federation (the "Russian Suspension Agreement")[3] in 1994[4] and 1996[5] which increased the Russian Federations's opportunity to sell uranium products and separative work units ("SWU"), in the United States, and expanded the authority for temporary imports of Russian uranium for processing and export. Similarly, we would not oppose any interpretation or amendment of the Kazakh Suspension Agreement that would provide expanded opportunities for the export of Kazakh uranium to the United States provided such exports do not result in the suppression or undercutting of prices of domestic products and comply with all applicable laws and international obligations.

---

[3] Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, 57 Fed. Reg. 49235 (Oct. 30, 1992).

[4] Amendments to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, 59 Fed. Reg. 15373 (April 1, 1994) (providing for matched sales of certain Russian uranium products.)

[5] Amendments to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, 61 Fed. Reg. 56665 (Nov. 4, 1996) (extending the matched sales program and providing for sales of natural uranium consistent with the USEC Privatization Act).

In its March 24 letter, however, the GOK has sought to justify a transaction with an interpretation of the Kazakh Suspension Agreement, which does not meet the foregoing criteria.[6] In particular, the GOK claims that a 1995 amendment to the Kazakh Suspension Agreement concerning the origin of Kazakh uranium enriched in a third country supersedes a pre-existing provision of the Russian Suspension Agreement which confers Russian origin on all uranium enriched in Russia. Under this interpretation, exporters of enriched Kazakh uranium are only bound by restrictions to which the GOK has specifically agreed. Thus, these exporters can export Kazakh uranium enriched in Russia without regard to any limitation not expressly set forth in the Kazakh Suspension Agreement—in contrast to exporters of other uranium enriched in Russia, who would be bound by the Russian Suspension Agreement.

For reasons stated more fully below, USEC believes the GOK's interpretation is legally unsupportable, unreasonably under the circumstances and undermines the fundamental objectives of both the Russian Suspension Agreement and the Kazakh Suspension Agreement. The interpretation should be rejected.[7]

---

[6] Due to its confidential nature, USEC has not been given access to the details of the transaction described in the GOK's March 24 letter. Thus, USEC is unable to comment directly on the transaction, although we have asked our outside counsel to provide such comments in our stead.

[7] USEC notes that the issue of the proper origin of Kazakh enriched uranium has already been extensively briefed in this proceeding. See, e.g., Letter from Richard Kingdon to the Hon. William M. Daley (Mar. 10, 1998); Letter from Richard Kingdon to the Hon. William M. Daley (Dec. 8, 1997). Unless the Department has specific questions concerning the parties' analysis, USEC believes that the Department has all

1. The GOK's Interpretation is Legally Unsupportable

In its March 24 letter, the GOK suggests that, because the GOK is not a party to the Russian Suspension Agreement, uranium from Kazakhstan cannot be subject to the Russian Suspension Agreement's terms. USEC disagrees. While the GOK itself may not be bound by the Russian Suspension Agreement in making exports of Kazakh uranium to the United States, any party importing enriched uranium into the United States is subject to all applicable restrictions, including those imposed by the Russian Suspension Agreement.[8] Whether or not the GOK has agreed to these restrictions is irrelevant. They are conditions imposed on the shipment of material into the United States. Thus, whoever the importer is, it must provide all required documentation for the import, including GOK export certificates for the natural uranium content of the imported material as well as Russian export certificates if the uranium was enriched in Russia. The GOK cannot use the fact that it is not a party to the Russian Suspension Agreement in order to exempt importers from requirements that would otherwise apply to the imported material.

In addition,, nothing in the Kazakh Suspension Agreement, or its various amendments, states that the parties intended to supersede other requirements applicable to imports into the United States. Indeed, the Kazakh Suspension Agreement only requires the De-

---

the information necessary to make a decision on this issue.

[8] For instance, importers of Kazakh uranium are required to file a certification that the imports of such material do not circumvent, inter alia, the Russian Suspension Agreement. See Amendments to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, 61 Fed. Reg. 56,665, 56,666 (Nov. 4, 1996).

partment to extend "fair and equitable treatment for Kazakhstan vis-a-vis other countries that export uranium to the United States, taking into account all relevant factual and legal considerations, including the antidumping laws of the United States." 57 Fed. Reg. 49222, 49224 (Oct. 30, 1992) (emphasis supplied). Thus, in evaluating the proper interpretation of the Kazakh Suspension Agreement, it is appropriate for the Department to consider all circumstances, including the impact of the GOK's interpretation upon the Russian Suspension Agreement and the need to ensure that applicable legal requirements are met (see discussion below).

2. The GOK Interpretation is Unreasonable

In its March 24 letter, the GOK appears to argue that, because the 1995 amendment did not expressly state that Kazakh uranium enriched in Russia would be subject to the Russian Suspension Agreement, the Russian Suspension Agreement is not applicable. USEC believes it is unreasonable to interpret the language in such a manner.

First, such an interpretation would place the Russian Federation at a clear disadvantage, since it would give Kazakh uranium enriched in Russia a preferred status over any other uranium enriched in Russia, including Russian uranium. Given the importance of the Russian Suspension Agreement to both the U.S. and Russian governments, it could not have been the Department's intent to give Kazakhstan such a preference or create such an exemption to the Russian Suspension Agreement, particularly since the Russian Suspension Agreement, as amended in 1994 (i.e., prior to the amendment relied upon by the GOK) provides that it is the parties' intent that Russia be accorded treatment no less favor-

able than any other Republic of the former Soviet Union that has a suspension agreement with the United States. . . ." 59 Fed. Reg. 15373, 15377 (Apr. 1, 1994). Further, if the Department had intended to create an opening for Russian-enriched uranium to be exported under the Kazakh Suspension Agreement, it would be reasonable to expect that the Department would have also addressed such exports in a manner similar to the provisions of the 1994 amendment, which permitted sales of enriched uranium and SWU, but only on a matched basis.

Second, at the time the Kazakh Suspension Agreement was amended to add the language relied upon by the GOK, the Russian Suspension Agreement expressly provided that "uranium enriched . . . in the Russian Federation . . . [is] covered by this Agreement, regardless of subsequent modification or blending." 57 Fed. Reg. 49235 (Oct. 30, 1992). The GOK must have been aware of this fact, if the GOK expected in good faith that the 1995 amendment would supersede the Russian Suspension Agreement, it is reasonable to expect that the GOK would have addressed the inconsistency with the Department at the time.

Finally, as discussed more fully below, the GOK's interpretation could result in the undercutting or suppression of prices for enriched uranium or its enrichment component. Since the fundamental objective of the Kazakh Suspension Agreement is to prevent such undercutting or price suppression, it is reasonable to insist on an interpretation that would frustrate this purpose.

In short, the GOK's attempt to give meaning to the absence of language addressing the Russian Suspension Agreement ignores the circumstances surrounding the

adoption and implementation of the amendment. The Department is not bound to interpret the Kazakh Suspension Agreement in such a narrow fashion. Instead, it should choose an interpretation which implements the underlying statutory requirements (discussed in greater detail below) and does not undermine any other suspension agreement.

3. The GOK Interpretation Undermines the Fundamental Purposes of the Russian an dKazakh Suspension Agreements

The Department's authority to enter into suspension agreements is set forth in Section 734 of the Tariff Act o f1930, as amended. 19 U.S.C. § 1673c. It provides, inter alia, that the Department may only suspend an investigation of imports from a non-market economy such as Kazakhstan if the Department determines (i) the agreement is in public interest; (ii) effective monitoring of the agreement by the United States is practicable; and (iii) the agreement will prevent the suppression or undercutting of domestic prices of the merchandise under investigation. *Id.* § 1673c(1). The statute further provides that a public interest determination includes a consideration of the impact of the agreement on U.S. consumers, on the international economic interests of the of the United States and on the competitiveness of the domestic industry producing the like merchandise (including any impact on employment and investment in that industry). *Id.* § 1673c(a)(2).

The preamble to both the Russian and Kazakh Suspension Agreements include the required determinations:

> The Department finds that this Agreement is in the public interest; that effective monitoring of this Agreement by the Department is practicable; and that this Agreement will prevent the suppression or undercutting of price levels of domestic uranium products by imports of merchandise subject to this Agreement.

57 Fed. Reg. 49222 (Oct. 30, 1992) (Kazakh Suspension Agreement); 57 Fed. Reg. 49235 (Oct. 30, 1992) (Russian Suspension Agreement). The "merchandise subject to this Agreement" referred to in the preceding excerpt includes enriched uranium.

The interpretation proposed by the GOK would undermine each of these required determinations. First, the Kazakh Suspension Agreement could no longer be said to serve the public interest if, as the GOK proposes, it is interpreted to create a means to circumvent the Russian Suspension Agreement. Second, given the fungibility of uranium, it would be difficult to monitor whether uranium enriched in Russia in fact was produced from Kazakh uranium or uranium of other origins. Third, permitting the importation of enriched uranium, subject only to the Appendix A limits on the natural uranium used to produce the enriched uranium, clearly threatens to undercut the price of enriched uranium in the United States. The Appendix A limits are tied only to the price of natural uranium.[9] The price of enriched

---

[9] In the nuclear fuel cycle, the price of enriched uranium is represented by the price of the natural uranium and the enrichment required to produce the enriched uranium. Utilities typically purchase each component separately, although enrichers typically produce the utilities' enriched uranium before the natural uranium is delivered.

uranium is subject to other factors, including the price of enrichment, which the Kazakh Suspension Agreement does not address.[10] Thus, permitting the importation of enriched uranium without regard to the price of enriched uranium or its SWU components invites the price suppressing effects that the Russian Suspension Agreement avoids. Indeed, in our most recent filing with the Department in this processing, we included an article from a trade publication which indicates the price suppressive effect of the availability of this Kazakh material.[11]

In closing, USEC would like to address a semantic argument raised by the GOK concerning the scope of the Russian Suspension Agreement. At one point in its letter, the GOK argues that enriched uranium located in Kazakhstan at the time of the break-up of the former Soviet Union cannot be subject to the Russian Suspension Agreement, because enrichment occurred in the former Soviet Union and not "in the Russian Federation" (the language used in the Russian Suspension Agreement). This is a specious argument. By this time logic, uranium would not be covered by the Kazakh Suspension Agreement if it were mined prior to the break

---

Thus, while ostensibly selling just the enrichment component, the enricher actually supplies the enriched uranium in return for (i) payment for the enrichment plus (ii) natural uranium to replace the natural uranium used by the enricher to produce the enriched uranium.

[10] Undoubtedly, this is due to the fact that, at the time the Kazakh Suspension Agreement was adopted, the Department had no reason to believe that the GOK would argue that the Kazakh Suspension Agreement exempted Russian-enriched uranium from the limits under the Russian Suspension Agreement.

[11] Letter from Richard Kingdom to the Hon. William M. Daley (Mar. 10, 1998).

up of the Soviet Union in the territory now know as Kazakhstan because the Kazkah Suspension Agreement only refers to "uranium from Kazakhstan" and not uranium from the former Soviet Union. That could hardly have been the intent. Rather, as we have argued elsewhere in this submission, the Kazakh Suspension Agreement and the Russian Suspension Agreement need to be given a practical interpretation that takes all surrounding circumstances into account, including the statutory requirements that underlie the Department's authority to enter into suspension agreements and the need to ensure that suspension agreements are not interpreted in a way that undermines other international obligations of the United States. Results-oriented technical readings of these agreements should be rejected out of hand. Further, given the fungibility of uranium, making a distinction between enriched uranium from before and after the break up of the Soviet Union would render it impossible for the Department to monitor the suspension agreements to ensure compliance with the applicable restrictions.

For the foregoing reasons, we respectfully request the Department reject the GOK's request for approval of the proposed transaction, or any similar transaction that may be submitted in the future.

This letter has been served on parties to this proceeding as indicated by the attached certificate of service. Please do not hesitate to contact the undersigned if you have any questions concerning this submission.

Sincerely,

/s/ RICHARD O. KINGDON
RICHARD O. KINGDON
Vice President, Marketing
& Sales

cc: Mr. Joseph Spetrini

CERTIFICATION

In accordance with 19 C.F.R. § 353.31(i)(1), I Richard O. Kingdon, Vice President, Marketing and Sales, currently employed by the United States Enrichment corporation, certify that (1) I have read the attached submission, and (2) the information contained in this submission is, to the best of my knowledge, complete and accurate.

/s/ RICHARD O. KINGDON
RICHARD O. KINGDON
Date: April 8, 1998

BEFORE THE
UNITED STATES DEPARTMENT OF
COMMERCE INTERNATIONAL TRADE
ADMINISTRATION

Inv. No. A-821-802

IN THE MATTER OF URANIUM FROM THE RUSSIAN FEDERATION

Sunset Review
Document contains no business proprietary information.

PUBLIC DOCUMENT

REBUTTAL OF USEC INC. TO THE SUBSTANTIAL RESPONSES TO THE NOTICE OF INITIATION OF SUNSET REVIEW FILED BY MINATOM, ET AL. AND THE AD HOC UTILITIES GROUP

Pursuant to 19 C.F.R. § 351.218(d)(4), this Rebuttal is filed on behalf of USEC Inc. and its subsidiary United States Enrichment Corporation (collectively, "USEC"), domestic interested parties in the above-captioned five-year ("sunset") review, to the responses filed in this proceeding by the Ministry of the Russian Federation for Atomic Energy, AO Techsnabexport, and Globe Nuclear Services and Supply GNSS, Limited (collectively "Minatom") and the Ad Hoc Utilities Group ("AHUG") to the Notice of Initiation issued by the Department of Commerce ("Department").[1] In addition, USEC joins in

---

[1] See 64 Fed. Reg. 41915 (Aug. 2, 1999).

the rebuttal comments filed by the Ad Hoc Committed of Domestic Uranium Producers.

* * * * *

U.S.C. § 1675(a)(1)(C) at any time, which it did not do.[47] It is this process, and not a sunset review, which is the appropriate procedure for calculation of a dumping margin.

In sum, launching simultaneous—or, more logically, sequential—investigations of whether Russia remains a nonmarket economy and whether Russian uranium has been sold at dumped prices in some recent period would be unprecedented, unwarranted, and, ultimately, inconclusive of the determination the Department is required to make in this sunset review.

IV. OTHER ISSUES RAISED BY MINATOM AND AHUG LACK MERIT OR ARE NOT RELEVANT TO THE DEPARTMENT'S ANALYSIS OF WHETHER DUMPING WOULD CONTINUE OR RECUR IF THE SUSPENSION AGREEMENT WERE TERMINATED.

A. The Domestic Industry Firmly Supports the Continuation of the Russian Suspension Agreement and Has Adequately Responded to the Department's Notice of Initiation.

Minatom and, to a lesser degree, AHUG allege that this sunset review does not have the support of the domestic industry, an allegation the respondents suggest

---

[47] That section provides that, upon request, the Department will "review the current status of, and compliance with, any agreement by reason of which an investigation was suspended, and review the amount of any . . . dumping margin involved in the agreement."

the Department confirm with a determination of industry support. Minatom's contention is based on two erroneous presumptions. First, Minatom and AHUG argue that USEC is not a producer, and therefore should not be considered part of the domestic industry.

Second, they argue that the unique circumstances of this case suggest that the Department make a new support determination, a determination from which USEC's views should be rejected on the grounds that it is an importer of the subject merchandise. For the following reasons, Minatom's and AHUG's arguments should be rejected.

1. USEC is a producer of the domestic like produce and has the right to participate in the case.

USEC (and its predecessor, the U.S. Department of Energy ("DOE")) has participated in this proceeding and in the Russian Suspension Agreement as a domestic interested party for over seven years. USEC has commented on amendments to the suspension agreement, and on individual transactions conducted thereunder. Counsel for USEC has requested, and been granted, access to business proprietary information under the administrative protective order in these proceedings as a representative of a domestic producer. Now, for the first time in history of this case, USEC's standing to participate in this proceeding is being challenged on the grounds that USEC is not a member of the domestic industry. This argument is simply absurd. USEC is a "domestic interested party," and as such is fully entitled to participate in this sunset review.

The determination of which companies are entitled to participate in a sunset review begins with an analysis of the merchandise subject to the proceeding. In this re-

view, the merchandise subject to the Suspended Investigation includes "uranium enriched in U_{235} and its compounds.[48] For this proceeding, the "domestic like product"—the "product which is like . . . the article subject to an investigation"—includes enriched uranium. Because USEC is a domestic producer of enriched uranium, a domestic like product, USEC is by definition a domestic interested party,[49] and as such is entitled to participate in this sunset review.[50]

Minatom questions USEC's right to participate in this proceeding because, in Minatom's words, USEC is not a "'producer' of uranium in any traditional sense."[51] It is certainly indisputable that USEC produces en-

---

[48] Uranium from Kazakhstan, Kyrgyzstan, Russia, Taijkistan, Ukraine, and Uzbekistan: Suspension of Investigations and Amendment of Preliminary Determinations, 57 Fed. Reg. 49220, 49221 (Dep't Commerce 1992); Russian Suspension Agreement, 57 Fed. Reg. at 49235.

[49] The definition of "domestic interested party" in 19 C.F.R. § 351.102(b) includes an "interested party" as described in section 771(9)(C) of the Tariff Act of 1930—"a manufacturer, producer, or wholesaler in the United States of a domestic like product." 19 U.S.C. § 1677(9)(C).

[50] 19 C.F.R. § 351.218(d). This conclusion also refutes Minatom's argument that the Paper, Allied-Industrial, Chemical & Energy Workers International Union ("PACE") should not be deemed an interested party in this proceeding. See Minatom Resp. at 6-7. USEC also notes that PACE represents workers at Allied Signal's uranium conversion plant in Metropolis, Illinois, yet another producer of the domestic like product. See Letter from Philip H. Potter to the Hon. William M. Daley at 2 (Aug. 17, 1999). PACE is the successor to the Oil, Chemical and Atomic Workers International Union, AFL-CIO ("OCAW"), which was an original petitioner in the 1991 proceeding. Id. Having accepted OCAW (now PACE) as a petitioner for over seven years, it would make no sense to disqualify them now.

[51] Minatom Resp. at 4.

riched uranium. In fact, its gaseous diffusion plants in Portsmouth, Ohio, and Paducah, Kentucky, produce no commercial product other than enriched uranium, and USEC is the only commercial producer of enriched uranium in the United States. Minatom appears to base its objections on the fact that while USEC produces enriched uranium, it sells "services."[52] This argument was address, and soundly rejected, by the ITC in the preliminary injury determination in Uranium from the U.S.S.R.[53] In that investigation, respondents argued that the Department of Energy (the precursor to USEC) "is not a 'producer,' but merely provides the 'service' of enrichment."[54] The ITC dismissed that argument with one appropriate word—"spurious"—and concluded that the DOE was a "producer."[55] The same analysis employed by the ITC in its preliminary injury determination, and apparently applied by the Department throughout the term of the Suspension Agreement, is equally applicable to this sunset review. There can be no question that USEC is entitled to participate in these proceedings and that it is part of the domestic uranium industry.

---

[52] Minatom claims that USC provides, and derives revenue from, "services," and is thus "in an entirely different posture than the mining interests that filed the petition." Id. at 3. AHUG makes a comparable argument. AHUG Resp. at 15 n.14.

[53] Inv. No. 731-TA-539 (Prelim.), USITC Pub. No. 2471 at 9 (Dec. 1991).

[54] Id.

[55] Id. The ITC found that, in prior cases, producers manufacturing products on a "tolled" basis were fully qualified to participate as domestic producers.

UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

A-427-818, C-427-819,
A-412-820, C-412-821,
A-428-828, C-428-829,
A-421-808, C-421-809
Investigations
Public Document

Date: December 27, 2000

Memorandum for: Holly A. Kuga
Acting Deputy Assistant Secretary
AD/CVD Enforcement, Group II

From: Melissa G. Skinner s/MGS
Director
AD/CVD Enforcement Office 6

Subject: Determination of Industry Support for the Antidumping and Countervailing Petitions on Low Enriched Uranium from France, Germany, the Netherlands, and the United Kingdom

I. Summary

The Department of Commerce (the Department) has received petitions requesting initiation of antidumping (AD) and countervailing duty (CVD) investigations on low enriched uranium (LEU) from France, Germany, the Netherlands, and the United Kingdom. We have examined the extent of industry support for each of the petitions, and recommend finding there is adequate industry support for each.

II. Background

On December 7, 2000, the Department of Commerce (the Department) received petitions filed in proper form by USEC Inc. and its wholly owned subsidiary, United States Enrichment Corporation (referred to hereafter as the petitioner). On December 26, 2000, petitioner amended its petitions to include the Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL-CIO, CLC, and Local 5-550 and Local 5-689 (collectively PACE). In a separately filed letter, PACE joined in the petitions on December 26, 2000. The petitioner requested the imposition of AD and CVD duties on imports of LEU from France, Germany, the Netherlands, and the United Kingdom.

Several parties submitted comments and rebuttal comments concerning industry support.

Specifically, on December 19, 2000, the Ad Hoc Utilities Group (Utilities Group[1]) representing several U.S. utility companies, filed comments, arguing that the utility companies qualify as domestic producers of LEU, but made no statement as to its interested party status under 771(9)(C) of the Tariff Act of 1930, as amended, (the Act). On December 20 and 26, 2000, Eurodif/Cogema and Urenco filed comments and rebuttal comments on industry support based upon their claims of interested party status under section 771(9)(A) of the Act, each as "a foreign manufacturer, producer, or exporter, or United States importer of subject merchandise." USEC filed rebuttal comments on industry support on December 21 and 22, 2000.

At the request of the governments of France, Germany, the Netherlands, and the United Kingdom, we held consultations, under 19 C.F.R § 351.202(i)(2) of the Department's regulations, with delegations from these governments, as well as the Delegation of the European Commission, on December 21, 2000 concerning the CVD petitions. During the consultations, these governments and the Delegation of the European Commission voiced the same arguments related to industry support as submitted by the Utilities Group, Eurodif/Cogema, and Urenco.[2]

---

[1] The Utilities Group includes: Arizona Public Service Co.; Carolina Power & Light Co.; Commonwealth Edison Co.; Consumers Energy; Dominion Generation; Duke Energy Corp.; DTE Energy; Entergy Services, Inc.; First Energy Nuclear Operating Co.; Nuclear Management Co.; PSEG Nuclear LLC; Southern Nuclear Operating Co.; Union Electric Company (d/b/a/ AmerenUE); and Wolf Creek Nuclear Operating Corp.

[2] *See* the December 22, 2000, Memorandum, "Consultations with the Delegation of the European Commission and the Governments of

III. Objections to Submission by the Utilities Group

In its letter of December 21, 2000, USEC argues that the Utilities Group does not qualify as an interested party under section 771(9) of the Act. USEC argues that the Utilities Group meets none of the definitions under the statute. USEC claims that the Utilities Group is a consumer of the subject merchandise and that in the Department's sunset review, members of the Utilities Group previously termed themselves "industrial users" in accordance with section 777(h) of the Act, not producers of uranium. USEC argues that because only interested parties are permitted to submit comments on standing to bring a petition, and because, by their own admission and the Department's determination in the sunset review, the members of the Utilities Group do not qualify as producers of the domestic like product, their comments should be stricken from the record.

The Department only accepts comments concerning industry support for a petition prior to initiating an investigation from persons who would qualify as an interested party under section 771(9) if an investigation were initiated. In this case, the comments provided by the Utilities Group focused on the issue of industry support, and in particular, the utility companies' status for purposes of industry support, either as domestic producers or industrial users and consumers of the domestic like product. Thus, we accepted the comments filed by the Utilities Group for the limited purpose of determining their status in this case. However, the Department's limited

---

France, Germany, the Netherlands, and the United Kingdom Regarding the Countervailing Duty Petition on Low Enriched Uranium."

acceptance of the submission does not confer producer status upon the Utilities Group.

IV. Applicable Statutory/Regulatory Requirements

Sections 702(c)(4)(A) and 732(c)(4)(A) of the Act provides that the Department shall determine that the petition has been filed by or on behalf of the industry if:

> (i) the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and
>
> (ii) the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition.

Sections 351.203(e)(1)-(5) of the Department's regulations provide further guidance with respect to determining industry support. We reference specific provisions below, as applicable, in discussing our methodology for determining industry support in these cases.

V. Definition of U.S. Industry

Section 771(4)(A) of the Act defines the relevant industry as "the producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product."[3] In order to determine whether there is adequate industry sup-

---

[3] 19 U.S.C. § 1677(4)(A).

port for the petitions, it is necessary to first identify the domestic like product and then examine that industry's production.

A. Domestic Like Product

Section 771(10) of the Act defines domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title."[4] In this case, the domestic like product that corresponds to the imports covered by the petitions is low enriched uranium, which is described as uranium hexafluoride (UF6) with a U235 product assay of less than 20 percent that has not been converted into another chemical form, such as UO2, or fabricated into nuclear fuel assemblies.

* * * * *

that are licensed to enrich uranium.[7] Accordingly, USEC is the only company in the United States with the technology and the technical expertise necessary to produce LEU. And, all LEU produced in the United States must be enriched by USEC.

Further, the information on the record indicates that enrichment is a major manufacturing process in the production of LEU, responsible for a substantial portion of the total value of LEU;[8] and that

---

[4] 19 U.S.C. § 1677(10).

[7] USEC's Dec. 20, 2000 submission at 8, citing to the NRC's "Nuclear Materials and Waste Fact Sheets: Fuel Facilities."

[8] Petitioners, citing to *Uranium from Kazakhstan*, Inv. No. 731-TA-539-A, USITC Pub. No. 3213 at I-4 to I-5 (July 1999), estimate that enrichment accounts for 60 percent of the total value of LEU. Petition at I-9.

enrichment is a necessary process for the production of LEU. Finally, we note that the product output from enrichment facilities is LEU, as defined in the petition.

In light of the fact that USEC is the only entity in the United States that enriches converted uranium to produce LEU; is the only entity with the technology and technical expertise to produce LEU; that enrichment is a necessary and major manufacturing process in the production of LEU; and that the product output from USEC's enrichment facilities constitutes the domestic like product, we find that USEC is the only producer of LEU in the United States. Accordingly, we determine that petitioner accounts for 100 percent of LEU production in the United States.

Moreover, on December 26, 2000, PACE joined the AD and CVD petitions, thereby establishing an independent basis for industry support. PACE represents the workers at the only two enrichment facilities in the United States. Accordingly, the Department is satisfied that USEC and PACE provide sufficient industry support for initiation of these petitions.

VI. Opposing Views on Industry Support

a. *The Department's "tolling" regulation*

The Utilities Group advances several arguments seeking to demonstrate that, under the Department's "tolling" regulation,[9] utility companies

---

[9] 19 C.F.R. § 351.402(h) (2000).

qualify as producers of LEU. The Utilities Group provides no argument as to why the tolling regulation should be applied for purposes of industry support.

* * * * *

[FOR OFFICIAL FILE]

ShawPittman
A Law Partnership Including Professional Corporations

NANCY A. FISCHER
202.663.8965
nancy.fischer@shawpittman.com

PUBLIC DOCUMENT
Investigation Nos. A-427-818, C-427-819, A-412-820, C-412-821, A-428-828, C-428-829, A-421-808, C-421-809
Total Number of Pages: 51
Investigation
Office6/Group II

April 5, 2001

VIA HAND DELIVERY

The Honorable Donald L. Evans
Secretary of Commerce
Attention: Import Administration
Central Records Unit
Room 1870
U.S. Department of Commerce
14th Street & Constitution Avenue, N.W.
Washington, D.C. 20230

Re: Antidumping and Countervailing Duty Investigations: Low Enriched Uranium From France, Germany, the Netherlands and the United Kingdom

Dear Secretary Evans:

This letter is submitted on behalf of the Ad Hoc Utilities Group ("Utilities Group")[1] in response to submissions by the petitioner commenting on the scope of the Department's investigation and the content of the Department's questionnaires to the respondents.

Many of USEC's comments and suggested additions to the antidumping questionnaire are based on its argument that purchases of enrichment services by utilities should be treated as sales of goods. The Utilities Group disagrees, and believes it is vital that the Department understand the nature of the enrichment services contracts. Members of the Utilities Group are parties to these contracts, and therefore are uniquely well-positioned to comment on this subject.

This submission addresses the following issues:

1. The Department must only compare sales of subject merchandise, not services.

---

[1] The members of the Ad Hoc Utilities Group are Arizona Public Service Co., Carolina Power & Light Co., Dominion Generation, Duke Energy Corp., DTE Energy, Entergy Services, Inc., Exelon Corporation (the newly formed entity combining Commonwealth Edison Co. and PECO), First Energy Nuclear Operating Co., Florida Power Corp., Florida Power and Light Co., Nuclear Management Co. LLC (on behalf of its members [*sic*] companies Alliant Energy Nuclear, LLC, Consumers Energy, NSP Nuclear Corp., WEC Nuclear Corp., and WPS Nuclear Corp.), Pennsylvania Power and Light, PSEG Nuclear LLC, South Texas Project, Southern California Edison, Southern Nuclear Operating Co., Union Electric Co. (d/b/a/ AmerenUE) and Wolf Creek Nuclear Operating Corp.

2. The Department should not rely upon information requested in the antidumping questionnaires related to services contracts.

3. There is multilateral agreement that uranium enrichment is a service, and the U.S. government has agreed with this position in negotiating the General Agreement on Trade in Services ("GATS").

I. THE "MERCHANDISE" SUBJECT TO INVESTIGATION IS THE SALE OF LEU, NOT ENRICHMENT SERVICES

The purpose of the antidumping law is to determine whether "a class or kind of foreign *merchandise*[2] is being, or is likely to be, *sold* in the United States at less than fair value."[3] If the Department finds that *sales of merchandise* are made at less than fair value, the statute authorizes the Department to impose a duty "upon such merchandise in an amount equal to the amount by which *normal value* exceeds the *export price for the merchandise*."[4]

Accordingly, the antidumping law is structured to compare *sales of subject merchandise* in the relevant

---

[2] "*Subject merchandise*" is defined as "the class or kind of *merchandise* that is within the scope of an investigation. 19 U.S.C. § 1677(25) (emphasis added).

[3] 19 U.S.C. § 1673. Dumping is specifically defined under the statute as "the *sale* or likely sale of *goods* at less than fair value." 19 U..S.C. § 1677(34) (emphasis added).

[4] 19 U.S.C. § 1673. The dumping margin is defined under the statute as the "amount by which the normal value exceeds the export price or the constructed export price of the *subject merchandise*." 19 U.S.C. § 1677(35)(A) (emphasis added).

foreign country market ("normal value") with *sales of the subject merchandise* in the United States ("export price" or "constructed export price"). "Normal value" is defined as "the price at which the 'foreign like *product*'[5] is first *sold* . . . in the exporting country."[6] "Export price" is defined as the "price at which the *subject merchandise* is first *sold* in the United States . . . by a seller not affiliated with the producer or exporter."[7] Because the Department must evaluate *sales of the subject merchandise*, the Department's questionnaire should request information related to *sales of the subject merchandise*, not sales of services.

In this case, the subject merchandise is low enriched uranium ("LEU"). However, virtually all of the respondents' transactions with their utility customers is in the form of services contracts to enrich uranium feed material (that is, the U_3O_8 the utilities purchase from mining companies and arrange to have converted into UF_6) provided to the respondents by the utilities. The same holds true for the utilities' contracts with USEC.

The fact that the utilities' enrichment services contracts with the enrichers are for the sale of services, not merchandise, is demonstrated by the following:

---

[5] "Foreign like product" means "merchandise." 19 U.S.C. § 1677(16).

[6] 19 U.S.C. § 1677b(1)(B)(i) (emphasis added).

[7] 19 U.S.C. § 1677a(a) (emphasis added). "Constructed export price" is the "price at which *subject merchandise* is *sold* in the United States . . . by a seller affiliated with the producer or exporter to a purchaser not affiliated with the producer or exporter." 19 U.S.C. § 1677a(b).

- The utilities' contracts with the enrichers are entitled "Enrichment Services Contracts" or "Uranium Enrichment Agreements."[8]
- The utilities pay the enrichers a fee to enrich uranium owned by the utilities based on the amount of work required (SWU—separative work units), not the quantity of uranium. The utilities are only invoiced for the enrichment services provided. There is no document or invoice that evidences a sale of uranium feed.
- The utilities purchase the uranium feed material, arrange and pay for its conversion, and provide the converted uranium and pay a fee to the enrichers. The utilities maintain title to the uranium throughout the enrichment process.
- Although the market for uranium feed material is volatile, enrichment services contracts do not address or account for fluctuations in the value of the feed material. If the enrichers truly were contracting for a product, the contracts would have to address changes in uranium feed values.
- Unless otherwise agreed, enrichment services contracts require enrichers to deliver finished LEU containing uranium feed material of the same country of origin as that delivered by the utility.
- The enrichers are merely bailees for the uranium feed material owned by the utilities. The utilities

---

[8] *See, e.g., Barseback Kraft AB v. United States*, 36 Fed. Cl. 691, 704 (1996) (The court concluded that "the present contracts are for uranium enrichment services, as indicated by the title of the contracts themselves.")

may trade their feed with other utilities while it is held by the enrichers.

- Where an enricher sells LEU as a product, the contracts differ materially from enrichment services contracts. For sales of LEU as a product, for example, the utilities may only specify the assay of the LEU. For sales of enrichment services, the utilities specify both the assay of the LEU and the assay of the tails, which dictates the amount of uranium feed to be provided by the utility as well as the amount of work to be performed by the enricher on each unit of uranium feed. The utilities may freely adjust the LEU assay, tails assay, and quantity of uranium feed for each delivery and generally do so depending on the relative prices of uranium feed, enrichment services, and tails flexibility.
- USEC has argued, and the U.S. Court of Federal Claims agreed, that USEC's enrichment contracts were for the sale of services, not goods, and therefore nor covered by the Uniform Commercial Code.[9]

---

[9]The court in *Barseback* concluded:

> Under the contracts, the individual utilities supply the USEC with the uranium. The USEC then enriches the uranium and returns to the customer uranium enriched to the customer's specifications. The price paid by the customer is based on the number of SWUs required to enrich the uranium to the customer's specifications. It is clear, then, from the process itself, that the customers are contracting for services, not goods, from the USEC. The U.C.C. does not apply to services contracts—it applies to the purchase of goods.

See Barseback at 705.

In an attempt to capture sales of enrichment services in the Department's investigation of LEU, USEC is urging the Department to re-characterize sales of enrichment services as sales of LEU for cash and "in kind payments" of feed. But sales of services cannot be re-characterized in this manner. As demonstrated above, the terms of the enrichment services contracts are clear—utilities are not providing "in kind payments" of uranium feed material. Rather, they are providing the feed material to which enrichment services will be applied. The fact that this feed material may be fungible does not preempt or in any way modify the essential terms of the contract—a contract for enrichment services, not for LEU.[10]

The terms of the antidumping law require the Department to compare sales of merchandise to determine whether dumping has occurred. The enrichment services contracts at issue are not sales of merchandise, and nothing can change that fact. Because there is no legal basis for the Department to apply the antidumping law to the sale of services, the only sales relevant to the

---

[10] USEC's arguments about the fungibility of uranium prove too much. When a grain elevator owner stores corn and wheat for a farmer and provides ground cattle feed on demand, the grain elevator owner does not return the same kernels of corn or grains of wheat to the farmer. But the grain elevator owner does not assert that it "owns" the grain held in storage or that it "sells" ground cattle feed to the farmer that is withdrawn and ground. Similarly, when a bank customer withdraws cash he or she previously deposited, the bank does not return the exact same cash to the customer. Nonetheless, the bank does not assert that it "owns" the cash it holds on deposit for its customers, or that it "sells" the cash that is withdrawn from accounts. The grain elevator owner and the bank—like the enrichers—provide storage and processing services for a fee.

Department's analysis are sales of the *subject merchandise*—LEU.[11]

II. THE DEPARTMENT SHOULD NOT RELY ON QUESTIONNAIRE RESPONSES RELATED TO SERVICES CONTRACTS IN CONDUCTING ITS ANTIDUMPING ANALYSIS

We have identified below particular examples of questions in the antidumping questionnaire that inappropriately seek information on sales of services rather than sales of merchandise. It is important that the Department be aware of the implications of these questions as it undertakes the process of reviewing the respondents' questionnaire responses.

A. Requests For Information Based On Mischaracterizations Of Enrichment Services Contracts

As discussed above, USEC has argued that the uranium feed material utilities deliver to enrichers for enrichment should be deemed as "payment in kind" for the uranium feed material the enrichers deliver hack to the

---

[11] The countervailing duty law is equally inapplicable to the respondents' services contracts with the utilities. The purpose of the countervailing duty law is to counteract subsidies bestowed with respect to *merchandise*, not services. 19 U.S.C. § 1671(a)(1). The Department's questionnaire requests information on the value of the *subject merchandise* sold to all markets during the period of investigation. Section I II, Part I.C. To the extent that the Department's countervailing duty questionnaire treats enrichment services contracts as contracts for the sale of subject merchandise, the same problem arises as with the antidumping questionnaire. As noted above, where the respondents provide enrichment services, they do not sell the subject merchandise and do not know the actual full value of the subject merchandise because the utilities supply the enrichers with the uranium feed.

utilities as LEU, and on that basis that the utilities are "buying" LEU from the enrichers. Based on USEC's mischaracterization of the services contracts, the Department's questionnaire requests information on "shipments of LEU pursuant to SWU contracts where the value of feed uranium is not specified."[12] This question is nothing more than a thinly veiled attempt by USEC to have the Department collect information on contracts for services.

Moreover, the Department's questionnaire requests information on the quantity of SWU "contained in" LEU.[13] However, SWU is not "contained in" LEU; rather, SWU is the measure of the amount of work required to enrich uranium to a particular assay. The fact that SWU, and not a quantity of LEU, is the consideration passing to the utilities under the contracts demonstrates beyond question that the contracts are not for merchandise, and that the enrichment services provided by the respondents are not "relevant sales."

As explained in detail above, enrichment services contracts, by their own terms, are for enrichment services only, and the great majority of those contracts require the utilities to retain legal title to the uranium feed material they deliver to the enrichers for a variety of reasons.[14] The Utilities Group is not aware of any con

---

[12] Section D, Attachment 2A.

[13] In Sections B and C, the Department requests that the respondents report "the number of SWU contained in each delivery, as specified in sales documentation." Section B and C, Field 22.0.

[14] Retention of legal title to feed material is especially important to the providers of enrichment services for tax reasons. In 1975, the state of Tennessee assessed a property tax of approximately $13.5 million on an inventory of enriched uranium owned by the Japanese government

tract under which a utility has agreed to pay for enrichment services with cash and uranium. The feed material is purchased by the utility, pursuant to individual contracts with unique terms, conditions and pricing, and delivered to enrichers for processing only. The suppliers of the feed material are not affiliated with the respondents, and the enrichers do not know the value of the uranium feed material delivered to them—a value that varies considerably.[15] Finally, the utilities can and do sell feed material amongst each other after delivery to the enricher without the enricher's consent, and financing entities may have a security interest in feed material delivered to the enricher, without the enricher's consent.

For these reasons, responses to questions soliciting information about deliveries under enrichment services contracts are irrelevant to the Department's antidumping analysis.

---

and stored in that state. *See* Kwitny, Jonathan, *Even Helping Hands Can Suffer Tax Bite in U.S., Japan Finds; Purchase of Uranium Services to Aid Our Trade Balance, Sets Off A Local Reaction*, The Wall Street Journal, Oct. 28, 1975, at A1, 31. Enrichers, including USEC, are anxious to avoid any risk of this type of liability.

[15] In fact, the feed material may be purchased well in advance of its required delivery time to the enricher and stored in inventory by the utility. Thus, the value of the feed acquired by the utilities may differ dramatically from the feed price at the time the LEU is delivered. Moreover, the amount of SWU services purchased for a particular delivery is directly linked to the value of the feed material acquired by the utility's selection of the tails assay, as discussed *supra*. If the price of the feed is lower, relatively more SWU services are purchased, and vice-a-versa. Consequently, USEC's claim that the feed value is a "wash" misrepresents the purchasing practices of the industry.

B. Request For The Calculation Of The "Entered Value Of Subject Merchandise"

In contrast to its established practice, the Department, at USEC's request, has asked the respondents to provide information on how they calculate "entered value of the subject merchandise for U.S. Customs purposes."[16] Where the respondents are selling the subject merchandise (*i.e.*, LEU as a product), the value of that LEU must be based on the contract price, which the Department already is obtaining through other questions. Therefore, this question appears designed only to obtain information on deliveries under enrichment services contracts where the contract does not contain a total value for the LEU.

When delivering LEU pursuant to enrichment services contracts, however, the respondents do not know the *actual* full value of the LEU they deliver; they only know what they are charging to enrich the uranium. The utilities do not share with them the costs incurred by the utilities in purchasing the U_3O_8 from mining companies and in arranging for the toll conversion service for that U_3O_8. Any estimates of uranium feed value used by the respondents to satisfy customs law requirements when delivering LEU pursuant to services contracts are irrelevant to * * *.

* * * * *

[16] Section A, Question 4(m): "How does your company calculate entered value of the subject merchandise for U.S. Customs purposes? Please submit documentation for your most recent entry illustrating the manner in which entered value is calculated."

B. WTO Members, Including The United States Use The CPC Classification System As The Basis For Identifying Services Sectors (Including Energy Services) Under The GATS

Although the original purpose of the CPC was to provide a framework for the international comparison of statistics dealing with goods and services, the members of the World Trade Organization ("WTO") have adopted the CPC coding system for purposes of identifying services sectors covered by the GATS.[26]

The GATS is the first binding multilateral agreement (not including regional trade agreements) regulating international trade in services. The agreement covers virtually all services that are traded internationally. The GATS defines trade in services broadly as encompassing all trade in services by any of the following four modes:

- Cross-Border Supply: services supplied from one country to another;
- Consumption Abroad: consumers making use of services in another country;
- Commercial Presence: foreign companies creating subsidiaries or branches to provide services in another country; and
- Presence of Natural Persons: individuals traveling from their own country to supply services in another.

---

[26] *See GATT Secretariat's Services Sectoral Classification List*, MTN.GNS/W/120. *See* Exhibit 2.

The utilities' purchase of enrichment services from the respondents is trade in services through the modes of "consumption abroad" and "cross-border supply."

Obligations under the GATS include (1) those that apply to all services covered by the GATS ("general obligations"), and (2) those that apply only to specific service sectors for which governments have undertaken listed commitments in schedules attached to the GATS "specific commitments").

In the context of the GATS, the U.S. government considers uranium enrichment to be a service. In a recent submission to the WTO on objectives for further GATS negotiations, the U.S. government submitted a statement of its views regarding the continued negotiation on energy services.[27] In its paper, the U.S. government defined energy services as "those services involved in the exploration, development, extraction, *production*, generation, transportation, transmission, distribution, marketing, consumption, management, and efficiency *of* energy, *energy products and fuels*."[28] The U.S. government further stated that the classification of energy services under the GATS should "incorporate all energy services and energy-related service activities provided for within W/120" (*i.e.*, the UN CPC code list used as the basis for GATS commitments and incorporated into the WTO document system as document number MTN.GNS/W/120). The index attached to the U.S. negotiation paper specifically identified CPC category 884

---

[27] Communication from the United States on Energy Services, WTO Council for Trade in Services Special Session, WTO Doc. S/CSS/W/24 (Dec. 18, 2000). *See* Exhibit 3.

[28] *Id.* at Section 1A. (emphasis added).

as an energy service, which is the category that covers uranium enrichment.

In light of the above, if the Department included sales of uranium enrichment services within the scope of the antidumping law, it would be taking a position contrary to the position of the U.S. government in the context of the GATS. Moreover, it should be noted that all WTO members use the CPC coding system as the basis for scheduling commitments for trade in services. Consequently, if the U.S. government does not maintain a consistent approach in its interpretation of what is covered by the GATS, the entire system of commitments under that agreement may be undermined.

CONCLUSION

The arguments advanced by USEC would require the Department to ignore the requirement of the antidumping law to compare sales of merchandise. There is no basis in the antidumping law to create a sale of merchandise where none exists. Accordingly, the Department should disregard USEC's attempts to persuade the Department to ignore the antidumping statute and the regulations.

Recognizing the legitimate contracting practices of the nuclear fuel cycle industry would not lead to the "circumvention superhighway" suggested by USEC. The purpose of the circumvention provision of the antidumping law is to prevent companies from changing their behavior to escape antidumping liability. For decades, the utilities have separately purchased and arranged for the services provided by the various stages of the nuclear fuel cycle: utilities did not suddenly change their purchasing practices to avoid application of the trade laws. Rather, it is USEC that is trying to con-

vince the Department that it should ignore the consistent and established practice of the nuclear industry of contracting for the purchase of enrichment services. The Department should not be misled by USEC's attempts to justify applying the trade law to services based on a circumvention theory that has no basis.

* * * * *

[Receiver __ 11, 1996]

DEPARTMENT OF INTERNATIONAL ECONOMIC AND SOCIAL AFFAIRS

STATISTICAL OFFICE OF THE UNITED STATES

STATISTICAL PAPERS **Series M No. 77**

PROVISIONAL CENTRAL PRODUCT CLASSIFICATION

[Logo Omitted]
UNITED NATIONS
New York, 1991

II. DETAILED STRUCTURE: SECTION, DIVISIONS, GROUPS, CLASSES AND SUBCLASSES

000027

Group	Class	Subclass	Title	Corresponding ISIC	Corresponding BS	Corresponding SITC
			articles, blotting-pads, binders, file covers, forms and other articles of stationery, of paper or paperboard			
327	3270	32700	Composed type, prepared printing plates or cylinders, impressed lithographic stones or other impressed media for use in printing	2222	8442.50	726.35
DIVISION 33			COKE OVEN PRODUCTS; REFINED PETROLEUM PRODUCTS; NUCLEAR FUEL			
331	3310	33100	Coke and semi-coke of coal, of lignite or of peat; retort carbon	2310	2704	325
332	3320	33200	Tar distilled from coal, from lignite or from peat, and other mineral tars	2310	2706	335.21
333			Petroleum oils and oils obtained from bituminous materials, other than crude; preparations n.e.c. containing by weight 70% or more of these oils, such oils being the basic constituents of the preparations			
	3331	33310	Motor spirit (gasolene) including aviation spirit	2320		334.11
	3332	33320	Spirit type (gasolene type) jet fuel	2320		334.12
	3333	33330	Other light petroleum oils and light oils obtained from bituminous minerals (other than crude); light preparations n.e.c. containing not less than 70 per cent by weight of petroleum oils or oils obtained from bituminous minerals (other than crude), these oils being the basic constituents of the preparations	2320		334.19
	3334	33340	Kerosene (including kerosene type jet fuel)	2320		334.21
	3335	33350	Other medium petroleum oils and medium oils obtained from bituminous minerals (not kerosene), other than crude; medium preparations n.e.c. containing not less than 70 per cent by weight of petroleum oils or oils obtained from bituminous minerals (other than crude), these oils being the basic constituents of the preparations	2320		334.29
	3336	33360	Gas oils	2320		334.3
	3337	33370	Fuel oils n.e.c.	2320		334.4

Best Available Copy

Group	Class	Subclass	Title	Corresponding ISIC	BS	SITC
	3334	33340	Lubricating petroleum oils and oils obtained from bituminous minerals, other heavy petroleum oils and heavy oils obtained from bituminous minerals (other than crude), and heavy preparations n.e.c. containing not less than 70 per cent by weight of petroleum oils or oils obtained from bituminous minerals (other than crude), these oils being the basic constituents of the preparations	2320		334.5
334			Petroleum gases and other gaseous hydrocarbons, except natural gas			
	3341	33410	Propane and butanes, liquefied	2320	2711.12,.13	342
	3342	33420	Ethylene, propylene, butylene, butadiene and other petroleum gases or gaseous hydrocarbons, except natural gas	2320	2711.14,.19, .29	344
335	3350	33500	Petroleum jelly; paraffin wax, microcrystalline petroleum wax, slack wax, ozokerite, lignite wax, peat wax, other mineral waxes, and similar products; petroleum coke, petroleum bitumen and other residues of petroleum oils or of oils obtained from bituminous materials	2320	2712 2713	335.1, .41,.42
336			Radioactive elements and isotopes and compounds; alloys, dispersions, ceramic products and mixtures containing these elements, isotopes or compounds; radioactive residues			
	3361	33610	Natural uranium and its compounds; alloys, dispersions, ceramic products and mixtures containing natural uranium and its compounds	2330	2844.10	525.11
	3362	33620	Uranium enriched in U235 and its compounds; plutonium and its compounds; alloys, dispersions, ceramic products and mixtures containing uranium enriched in U235, plutonium or compounds of these products	2330	2844.20	525.13
	3363	33630	Uranium depleted in U235 and its compounds; thorium and its compounds; alloys, dispersions, ceramic products and mixtures containing uranium depleted in U235,	2330	2844.30	525.15

187

Group	Class	Subclass	Title	Corresponding ISIC	CPC	SITC
			thorium or compounds of these products			
	3369	33690	Other radioactive elements and isotopes and compounds; alloys, dispersions, ceramic products and mixtures containing these elements, isotopes or compounds; radioactive residues	2330	2844.40	525.19
337			Fuel elements (cartridges), for or of nuclear reactors			
	3371	33710	Fuel elements (cartridges), non-irradiated, for nuclear reactors	2330	8401.30	718.77
	3372	33720	Spent(irradiated) fuel elements (cartridges) of nuclear reactors	4010	2844.50	525.17
DIVISION 34			BASIC CHEMICALS			
341			Basic organic chemicals			
	3411	34110	Hydrocarbons and their halogenated, sulphonated, nitrated or nitrosated derivatives	2411	2901-2904	511
	3412	34120	Industrial monocarboxylic fatty acids; acid oils from refining	2411	1519.11-.20	431.31
	3413	34130	Alcohols, phenols, phenol-alcohols, and their halogenated, sulphonated, nitrated or nitrosated derivatives; industrial fatty alcohols	2411	1519.30 2905-2908	512.11-.14, .17,.19, .21, .23-.29, .3,.4
	3414	34140	Carboxylic acids and their anhydrides, halides, peroxides and peroxyacids and their halogenated, sulphonated, nitrated or nitrosated derivatives, except salicylic acid and its salts and esters and their salts	2411	2915-2917 2918.11-.19, .29,.30, .90	513.7,.8, .91,.92, .94-.96
	3415	34150	Amine-function compounds; oxygen-function amine-compounds, except lysine and its esters and salts thereof and glutamic acid and its salts; ureines and their derivatives and salts thereof; carboximide-function compounds and imine-compounds; nitrile-function compounds; diazo-, azo- or azoxy-compounds; organic derivatives of hydrazine or of hydroxylamine; compounds with other nitrogen function	2411	2921 2922.11-.30, .49,.50 2924.21 2925-2929	514.5, .61-.63, .65,.67, .73, .82-.89
	3416	34160	Organo-sulphur compounds and other organo-inorganic compounds; heterocyclic compounds n.e.c.	2411	2930 2931 2932.11-.19, .21,.90	515.4,.5, .61,.62, .69, .73-.75,

Group	Class	Subclass	Title	Corresponding ISIC
		87905	Translation and interpretation services	7499
		87906	Mailing list compilation and mailing services	7499
		87907	Specialty design services	7499
		87909	Other business services n.e.c.	7499
DIVISION 88			AGRICULTURAL, MINING AND MANUFACTURING SERVICES	
881			Services incidental to agriculture, hunting and forestry	
	8811	88110	Services incidental to agriculture	0140
	8812	88120	Services incidental to animal husbandry	0140
	8813	88130	Services incidental to hunting	0150
	8814	88140	Services incidental to forestry and logging	0200
882	8820	88200	Services incidental to fishing	0500
883	8830	88300	Services incidental to mining	1120
884			Services incidental to manufacturing, except to the manufacture of metal products, machinery and equipment	
	8841		Manufacture of food, beverages and tobacco, on a fee or contract basis	
		88411	Manufacture of food and beverages, on a fee or contract basis	15
		88412	Manufacture of tobacco on a fee or contract basis	16
	8842		Manufacture of textiles, wearing apparel and leather products on a fee or contract basis	
		88421	Manufacture of textiles on a fee or contract basis	17
		88422	Manufacture of wearing apparel on a fee or contract basis	18
		88423	Manufacture of leather products on a fee or contract basis	19
	8843	88430	Manufacture of wood and of products of wood and cork, except furniture; manufacture of articles of straw and plaiting materials, on a fee or contract basis	20
	8844		Manufacture of paper and paper products; publishing and printing ,on a fee or contract basis	
		88441	Manufacture of paper and paper products ,on a fee or contract basis	21

Group	Class	Subclass	Title	Corresponding ISIC
		88442	Publishing and printing ,on a fee or contract basis	22
	8845	88450	Manufacture of coke, refined petroleum products and nuclear fuel, on a fee or contract basis	23
	8846	88460	Manufacture of chemicals and chemical products, on a fee or contract basis	24
	8847	88470	Manufacture of rubber and plastics products, on a fee or contract basis	25
	8848	88480	Manufacture of other non-metallic mineral products, on a fee or contract basis	26
	8849		Manufacture of furniture; manufacture of other articles n.e.c.; recycling, on a fee or contract basis	
		88491	Manufacture of furniture on a fee or contract basis	361
		88492	Manufacture of other articles n.e.c. ,on a fee or contract basis	369
		88493	Recycling on a fee or contract basis	37
885			Services incidental to the manufacture of metal products, machinery and equipment	
	8851	88510	Manufacture of basic metals on a fee or contract basis	27
	8852	88520	Manufacture of fabricated metal products, except machinery and equipment, on a fee or contract basis	28
	8853	88530	Manufacture of machinery and equipment n.e.c., on a fee or contract basis	29
	8854	88540	Manufacture of office, accounting and computing machinery, on a fee or contract basis	30
	8855	88550	Manufacture of electrical machinery and apparatus n.e.c., on a fee or contract basis	31
	8856	88560	Manufacture of radio, television and communication equipment and apparatus, on a fee or contract basis	32
	8857	88570	Manufacture of medical precision and optical instruments, watches and clocks, on a fee or contract basis	33
	8858	88580	Manufacture of motor vehicles, trailers and semi-trailers, on a fee or contract basis	34
	8859	88590	Manufacture of other transport equipment, on a fee or contract basis	35
886			Repair services incidental to metal products, machinery and equipment	
	8861	88610	Repair services of fabricated metal products, except machinery and equipment, on a fee or contract basis	28
	8862	88620	Repair services of machinery and equipment n.e.c., on a fee or contract basis	29

Group	Class	Subclass	Title	Corresponding ISIC
	8863	88630	Repair services n.e.c. of office, accounting and computing machinery, on a fee or contract basis	30
	8864	88640	Repair services of electrical machinery and apparatus n.e.c., on a fee or contract basis	31
	8865	88650	Repair services of radio, television and communication equipment and apparatus, on a fee or contract basis	32
	8866	88660	Repair services of medical, precision and optical instruments, watches and clocks, on a fee or contract basis	33
	8867	88670	Repair services n.e.c. of motor vehicles, trailers and semi-trailers, on a fee or contract basis	34
	8868	88680	Repair services of other transport equipment, on a fee or contract basis	35
887	8870	88700	Services incidental to energy distribution	40
DIVISION 89			INTANGIBLE ASSETS	
891	8910	89100	Financial assets and liabilities	65
892			Non-financial intangible assets	
	8921	89210	Patents	7310
	8922	89220	Trademarks	
	8923	89230	Copyrights	
	8929	89290	Other non-financial intangible assets	
SECTION 9			COMMUNITY, SOCIAL AND PERSONAL SERVICES	
DIVISION 91			PUBLIC ADMINISTRATION AND OTHER SERVICES TO THE COMMUNITY AS A WHOLE; COMPULSORY SOCIAL SECURITY SERVICES	
911			Administrative services of the government	
	9111		Over-all government public services	
		91111	Executive and legislative services	7511
		91112	Financial and fiscal services	7513
		91113	Over-all economic and social planning and statistical services	7511
		91114	Government services to fundamental research	7511
		91119	Other administrative services of the government n.e.c.	7511
	9112		Administrative services of agencies that provide educational, health care, cultural and other social services excluding social security services	
		91121	Administrative educational services	7512

Part Three

EXPLANATORY NOTES FOR THE SERVICES LISTED IN CPC

* * * * *

87909 Other business services n.e.c.

Services generally provided to businesses, not elsewhere classified. Included here are business brokerage services, appraisal services other than for real estate, secretarial services, demonstration and exhibition services, etc.

DIVISION 88 AGRICULTURAL, MINING AND MANUFACTURING SERVICES

Services rendered on a fee or contract basis by units mainly engaged in the production of transportable goods, and services typically related to the production of such goods.

A great number and a wide variety of services are classified here which may be classified according to broad industry categories into:

Services incidental to agriculture, hunting, forestry and fishing: services rendered on a fee or contract basis, mostly performed at the site where the agricultural production is done, e.g. services providing agricultural machinery with drivers and crew; harvesting and related services; services of farm labour contractors; animal boarding, care and breeding services; services to promote propagation, growth and output of animals; services to promote commercial hunting and trapping; timber evaluation, firefighting, forest management including forest damage assessment services; logging related

services; services related to fishery and operational services of fish hatcheries or fish farms.

Services incidental to mining: services rendered on a fee or contract basis at oil and gas fields, e.g. drilling services, derrick building, repair and dismantling services, oil and gas well casings cementing services.

Exclusion: Mineral prospecting services, oil and gas field exploration and geophysical (e.g. seismic) and geological surveying services are classified in class 8675 (Engineering related scientific and technical consulting services).

Services incidental to manufacturing: these include manufacturing on a fee or contract basis, i.e. manufacturing services rendered to others where the raw materials processed, treated or finished are not owned by the manufacturer. Assembly, installation other than construction work, fitting of articles, maintenance and repair services are also classified here.

The following are examples of manufacturing services:

- services rendered on a fee or contract basis related to processing and preserving of meat, fish, fruit, vegetables, dairy products and bakery products;
- services rendered on a fee or contract basis related to finishing of textiles and manufacture of made-up textile articles (incl. services concerning some entrepreneurial functions, e.g. designing and preparing samples); services related to tanning and dressing of leather and to manufacture of leather and footwear;
- printing on a fee or contract basis and services related to printing, e.g. bookbinding services;

- casting and forging services of metals treatment and coating services of metals; general mechanical engineering services on a fee or contract basis; repair services incidental to metal products, machinery and equipment.

Exclusions: Installation work for constructions is classified in group 516. Repair services of motor vehicles, motorcycles, and household appliances, equipment, furnishings and other consumer goods are classified in subclasses 61120 and 61220 and in group 633 (Repair services of personal and household goods). Services consisting in merely bottling and labelling liquors, wines and waters are classified in subclass 62226 (Wholesale trade services of beverages), if performed as part of buying and selling at wholesale, and in subclass 87600 (Packaging services), if performed on a fee or contract basis.

Maintenance and repair services of office and computer machinery are classified in subclass 84500.

Services incidental to energy distribution: transmission and distribution services on a fee or contract basis of electricity, gaseous fuels and steam and hot water to household, industrial, commercial and other users.

Exclusion: Transport services via pipeline on a fee or contract basis of petroleum and natural gas are classified in subclass 71310.

DIVISION 89 INTANGIBLE ASSETS

891 Financial assets and liabilities

8910 89100 Financial assets and liabilities

Gold and IMF special drawing rights. Currency in circulation and transferable deposits. Other

claims on monetary institutions, other financial institutions and government organs that are represented by evidence of deposit. Short-term or long-term loans not elsewhere classified. Net equity of households on life insurance reserves and on pension funds. Proprietors' net equity in enterprises. Trade credit and advances. Other financial assets and liabilities.

892 Non-financial intangible assets

892 89210 Patents

Royalties for the right to use patents, i.e. periodic fees in respect of licences for inventions (novel ideas) concerning the manufacture of patented goods, or the use of patented processes. A patent may be defined as a document, issued by a government office, that describes the invention and creates a legal situation in which the patented invention can normally only be exploited with the authorization of the patentee. This protection is limited in time.

* * * * *

MULTILATERAL TRADE NEGOTIATIONS
THE URUGUAY ROUND

RESTRICTED
MTN.GNS/W/120
10 July 1991
Special Distribution

Group of Negotiations on Services

SERVICES SECTORAL CLASSIFICATION LIST

Note by the Secretariat

The secretariat indicated in its informal note containing the draft classification list (24 May 1991) that it would prepare a revised version based on comments from participants. The attached list incorporates, to the extent possible, such comments. It could, of course, be subject to further modification in the light of developments in the services negotiations and ongoing work elsewhere.

GATT SECRETARIAT
UR-91-0074

SERVICES SECTORAL CLASSIFICATION LIST

SECTORS AND SUB-SECTORS	CORRESPONDING CPC
1. BUSINESS SERVICES	Section B
A. Professional Services	
a. Legal Services	861
b. Accounting, auditing and bookeeping services	862
c. Taxation Services	863
d. Architectural services	8671
e. Engineering services	8672
f. Integrated engineering services	8673
g. Urban planning and landscape architectural services	8674
h. Medical and dental services	9312
i. Veterinary services	932
j. Services provided by midwives, nurses, physiotherapists and para-medical personnel	93191
k. Other	
B. Computer and Related Services	
a. Consultancy services related to the installation of computer hardware	841
b. Software implementation services	842
c. Data processing services	843
d. Data base services	844
e. Other	845+849
C. Research and Development Services	
a. R&D services on natural sciences	851
b. R&D services on social sciences and humanities	852

c. Interdisciplinary R&D services	853
D. Real Estate Services	
a. Involving own or leased property	821
b. On a fee or contract basis	822
E. Rental/Leasing Services without Operators	
a. Relating to ships	83103
b. Relating to aircraft	83104
c. Relating to other transport equipment	83101+ 83102+83105
d. Relating to other machinery and equipment	83106-83109
e. Other	832
F. Other Business Services	
a. Advertising services	871
b. Market research and public opinion polling services	864
c. Management consulting service	865
d. Services related to man. consulting	866
e. Technical testing and analysis serv.	8676
f. Services incidental to agriculture, hunting and forestry	881
g. Services incidental to fishing	882
h. Services incidental to mining	883+5115
i. Services incidental to manufacturing (except for 88442)	884+885
j. Services incidental to energy distribution	887
k. Placement and supply services of Personnel	872
l. Investigation and security	873
m. Related scientific and technical consulting services	8675

n. Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment)	633+ 8861-8866
o. Building-cleaning services	874
p. Photographic services	875
q. Packaging services	876
r. Printing, publishing	88442
s. Convention services	87909*
t. Other	8790
2. COMMUNICATION SERVICES	
A. Postal services	7511
B. Courier services	7512
C. Telecommunication services	
a. Voice telephone services	7521
b. Packet-switched data transmission services	7523**
c. Circuit-switched data transmission transmission services	7523**
d. Telex services	7523**
e. Telegraph services	7522
f. Facsimile services	7521**+7529**
g. Private leased circuit services	7522**+7523**
h. Electronic mail	7523**
i. Voice mail	7523**

* The (*) indicates that the service specified is a component of a more aggregated CPC item specified elsewhere in this classification list.

** The (**) indicates that the service specified constitutes only a part of the total range of activities covered by the CPC concordance (e.g. voice mail is only a component of CPC item 7523).

j. On-line information and data base retrieval	7523**
k. electronic data interchange (EDI)	7523**
l. enhanced/value-added facsimile services, incl. store and forward, store and retrieve	7523**
m. code and protocol conversion	n.a.
n. on-line information and/or data processing (incl. transaction processing)	843**
o. other	
D. Audiovisual services	
a. Motion picture and video tape production and distribution services	9611
b. Motion picture projection service	9612
c. Radio and television services	9613
d. Radio and television transmission services	7524
e. Sound recording	n.a.
f. Other	
E. Other	
3. CONSTRUCTION AND RELATED ENGINEERING SERVICES	
A. General construction work for buildings	512
B. General construction work for civil engineering	513
C. Installation and assembly work	514+516
D. Building completion and finishing work	517
E. Other	511+515+518
4. DISTRIBUTION SERVICES	

A. Commission agents' services	621
B. Wholesale trade services	622
C. Retailing services	631+632 6111+6113+6121
D. Franchising	8929
E. Other	
5. EDUCATIONAL SERVICES	
A. Primary education services	921
B. Secondary education services	922
C. Higher education services	923
D. Adult education	924
E. Other education services	929
6. ENVIRONMENTAL SERVICES	
A. Sewage services	9401
B. Refuse disposal services	9402
C. Sanitation and similar services	9403
D. Other	
7. FINANCIAL SERVICES	
A. All insurance and insurance-related services	812**
a. Life, accident and health insurance services	8121
b. Non-life insurance services	8129
c. Reinsurance and retrocession	81299*
d. Services auxiliary to insurance (including broking and agency services)	8140

B. Banking and other financial services (excl. insurance)	
a. Acceptance of deposits and other repayable funds from the public	8115-81119
b. Lending of all types, incl., inter alia, consumer credit, mortgage credit, factoring and financing of commercial transaction	8113
c. Financial leasing	8112
d. All payment and money transmission services	81339**
e. Guarantees and commitments	81199**
f. Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:	
- money market instruments (cheques, bills, certificate of deposits, etc.)	81339**
- foreign exchange	81333
- derivative products incl., but not limited to, futures and options	81339**
- exchange rate and interest rate instruments, inclu. products such as swaps, forward rate agreements, etc.	81339**
- transferable securities	81321*
- other negotiable instruments and financial assets, incl. bullion	81339**

g. Participation in issues of all kinds of securities, incl. under-writing and placement as agent (whether publicly or privately) and provision of service related to such issues	8132
h Money broking	81339**
i. Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial depository and trust services	8119+** 81323*
j. Settlement and clearing services for financial assets, incl. securities derivative products, and other negotiable instruments	81339** or 81319**
k. Advisory and other auxiliary financial services on all the activities activities listed in or Article 1B of MTN.TNC/W/50, incl. credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy	8131 or 8133
l. Provision and transfer of financial information, and financial data processing and related software by providers of other financial services	8131

C. Other

8. HEALTH RELATED AND SOCIAL SERVICES (other than those listed under 1.A.h-j.)

A. Hospital services	9311
B. Other Human Health Services (other than 93191)	9319
C. Social Services	933
D. Other	

9. TOURISM AND TRAVEL RELATED SERVICES

A. Hotels and restaurants (incl. catering)	641-643
B. Travel agencies and tour operators services	7471
C. Tourist guides services	7472
D. Other	

10. RECREATIONAL, CULTURAL AND SPORTING SERVICES (other than audiovisual services)

A. Entertainment services (including theatre, live bands and circus services)	9619
B. News agency services	962
C. Libraries, archives, museums and other cultural services	963
D. Sporting and other recreational services	964
E. Other	

11. TRANSPORT SERVICES

A. Maritime Transport Services	
a. Passenger transportation	7211
b. Freight transportation	7212
c. Rental of vessels with crew	7213
d. Maintenance and repair of vessels	8868**
e. Pushing and towing services	7214
f. Supporting services for maritime transport	745**
B. Internal Waterways Transport	
a. Passenger transportation	7221
b. Freight transportation	7222
c. Rental of vessels with crew	7223
d. Maintenance and repair of vessels	8868**
e. Pushing and towing services	7224
f. Supporting services for internal waterway transport	745**
C. Air Transport Services	
a. Passenger transportation	731
b. Freight transportation	732
c. Rental of aircraft with crew	734
d. Maintenance and repair of aircraft	8868**
e. Supporting services for air transport	746
D. Space Transport	733
E. Rail Transport Services	
a. Passenger transportation	7111
b. Freight transportation	7112
c. Pushing and towing services	7113
d. Maintenance and repair of rail transport equipment	8868**
e. Supporting services for rail transport services	743

F. Road Transport Services	
a. Passenger transportation	7121+7122
b. Freight transportation	7123
c. Rental of commercial vehicles with operator	7124
d. Maintenance and repair of road transport equipment	6112+8867
e. Supporting services for road transport services	744
G. Pipeline Transport	
a. Transportation of fuels	7131
b. Transportation of other goods	7139
H. Services auxiliary to all modes of transport	
a. Cargo-handling services	741
b. Storage and warehouse services	742
c. Freight transport agency services	748
d. Other	749
I. Other Transport Services	
12. OTHER SERVICES NOT INCLUDED ELSEWHERE	95+97+98+99

WORLD TRADE ORGANIZATION

S/CSS/W/24
18 December 2000

(00-5556)

Council for Trade in Services
Special Session

Original: English

COMMUNICATION FROM THE UNITED STATES

Energy Services

The attached communication has been received from the delegation of the United States with the request that it be circulated to Members of the Council for Trade in Services.

I. ENERGY SERVICES AND TRADE NEGOTIATIONS: BACKGROUND

1. The United States presents this proposal on negotiation of energy services for consideration by all Members. It is intended to stimulate discussion of this important sector in the world economy.

A. CLASSIFICATION OF ENERGY SERVICES

2. Energy services are those services involved in the exploration, development, extraction, production, generation, transportation, transmission, distribution, marketing, consumption, management, and efficiency of energy, energy products, and fuels.

B. IMPORTANCE OF ENERGY SERVICES

3. Competitive provision of energy services helps ensure that energy consumers have access to efficiently produced, market-priced, reliable energy. The availability of varied sources of energy at competitive prices, including access to supplies transmitted cross-border, contributes to a nation's ability to compete in the world marketplace. Competitive conditions in a nation's energy services markets enhance the competitiveness of domestic energy consumers as well as incentives for foreign investors to invest in both energy services and energy-consuming sectors. They also can benefit residential consumers and social services, as well as employment, through the beneficial impact on energy-dependent services and manufacturing sectors.

C. ENERGY SERVICES IN THE URUGUAY ROUND

4. Previous trade negotiations resulted in relatively few commitments for energy services for several, interrelated reasons:

- At the time of the Uruguay Round, much of the energy industry was characterized by state- owned enterprises operating mostly within home markets as vertically integrated companies with monopoly positions. Most service functions were performed "in- house" by energy companies that controlled the whole production and distribution chain.
- Because most energy services were conducted "in house" by the integrated, or monopoly, energy provider, W/120, which many Members used as a guide for scheduling their Uruguay Round commitments, contained no separate division for energy services. Notwithstanding this, in many cases energy ser-

vices appear to be included in the general categories of W/120.

- Services negotiators in the Uruguay Round focused primarily on sectors where discrete services were readily identifiable, trade was already significant, business interest in trade liberalization was strong, and consumer benefits were apparent, and so paid little attention to the energy services sector. Changing market conditions have, to a great extent, created a new paradigm for energy services in trade negotiations such that a focus on liberalization in this sector is now appropriate.

D. LEGITIMATE AND CONTINUING ROLE FOR REGULATION OF RESOURCES

5. The U.S. market offers access to service suppliers for a number of energy services. At the same time, we regulate, and will continue to regulate, these and related sectors in the public interest, at the national and subnational levels.

6. For instance, we maintain a number of regulations intended to ensure that energy resources are developed in a manner appropriate for addressing the challenges that this sector faces and consistent with objectives such as environmental protection, conservation of natural resources, and sustainable development. These include regulations requiring the use of technology in order to achieve environmental or conservation goals, or requiring the reporting and disclosure of information regarding environmental effects of sectoral activities.

E. MEASURES RESTRICTING THE PROVISION OF ENERGY SERVICES IN FOREIGN MARKETS

7. In their foreign operations, energy services providers face a variety of barriers that fall within two key categories—limits on market access and national treatment, and restrictive or discriminatory regulations.

- Market access and national treatment restrictions are similar to those faced by many services providers and include lack of a right of establishment, an inability to provide cross-border service, and discriminatory treatment between foreign and domestic service providers, among others.

- Regulatory frameworks can often be opaque, discriminatory, and arbitrary. Without a regulatory network that provides a basis for fair competition, energy services companies are often at a disadvantage to a favoured competitor, as in the case of procurement practices. As in the case of basic telecommunications and financial services, market access and national treatment commitments, while necessary, may not be sufficient to assure liberalization for energy services.

- Energy service providers often face barriers to entering needed personnel and equipment.

- Both market access, national treatment, and regulatory issues must therefore be addressed in the services negotiations. Market access and national treatment commitments may well be meaningless without regulatory reform. At the same time, it does little good for trade liberalization as a practical matter to create a pro-competitive regulatory envi-

ronment unless market access and national treatment restrictions are eliminated.

II. Negotiating Objectives: A Proposal for Energy Services

Introduction: GATS Market Access and National Treatment Disciplines

8. GATS market access and national treatment disciplines are relevant to the energy services sector, just like any other service sector.

- Our interests lie in areas of energy services that are open to private participation. In these areas, we seek commitments to market access, national treatment, and regulatory disciplines that allow competitive access by foreign and domestic service suppliers alike, while maintaining governmental abilities to address non-trade public policy goals as noted above.

- We realize that many countries are in different phases of regulatory development and that, as a result, competition for energy services varies significantly from one country to another. In this context, we understand that varying levels of competition may result in differences as members undertake their commitments in this sector.

Ownership of public resources

9. In a large number of countries, including our own, many natural resources are held in trust for the public. The United States recognizes this, and is not proposing to address issues of ownership of natural resources.

A. Address classification of energy services

10. The Index of energy activities would incorporate all energy services and energy-related service activities provided for within W/120, as well as those energy activities identified as not falling within the GATS. This discussion is ongoing in the Committee on Specific Commitments.

11. Many energy services are classified in W/120 under "Business" services (Division I), which typically includes such unregulated activities as computer and related services and management consulting services.

B. **Negotiate the broadest possible market access and national treatment commitments** for the services subcategories included in the Index of Energy Activities, consistent with the public interest objectives discussed above.

12. Energy services providers should have the opportunity to provide and distribute their services on a non-discriminatory basis through all four modes provided under the GATS.

13. Commitments for energy services should also incorporate a variety of principles aimed at ensuring the greatest possible market opening for energy services, including:

- Technological neutrality. Technology in energy services continues to evolve at a rapid pace. To ensure that energy services providers can use the best available technology, such as in site preparation and development, market access commitments should be made without regard for the technology used to provide energy services, except as noted above.

- Temporary entry of equipment/tools of the trade. Energy services providers often rely on specialized equipment to perform their service. Should negotiations on goods commence, we would strongly urge governments to consider eliminating tariffs on energy related goods. While not fully resolving the issues surrounding the need to temporarily enter equipment and tools of the trade, such an initiative could significantly help facilitate such activities and would enhance greatly the costs savings and benefits associated with energy services liberalization. We also urge consideration of other means to ensure that energy services providers can enter equipment and tools of the trade that are necessary to provide a service on which a market access commitment is made.

- Temporary entry of business persons and specialists. Energy services companies employ many people with highly specialized skills and should have the right to the temporary entry of essential personnel necessary to provide a covered service.

- Unrestricted movement of electronic information and transactions. Many energy services today rely on electronic information flows and transactions, including geologic data analysis, trading and brokering, and energy efficiency services. Any negotiation should ensure the free movement of these information exchanges and transactions.

C. CONSIDER A REFERENCE PAPER

14. Regulations and technical requirements may create significant impediments to market entry and competition. At the same time, however, regulation of the en-

ergy sector is essential to the achievement of public interest goals as discussed above, including the assurance of an open, competitive energy services market.

15. In the negotiations on basic telecommunications, WTO Members recognized the need for specific additional commitments related to a highly regulated sector that was undergoing deregulation and often was characterized by large incumbent suppliers.

16. All of the foregoing considerations pertain to energy services. With these considerations in mind, a similar paper on energy services might be developed that would address, for instance:

- Transparency in the formulation, promulgation and implementation of rules, regulations, and technical standards.
- Non-discriminatory third-party access to and interconnection with energy networks and grids, where they are dominated by government entities or dominant suppliers.
- An independent regulatory system separate from and not accountable to any supplier of energy services.
- Nondiscriminatory, objective and timely procedures for the transportation and transmission of energy.
- Requirements that parties maintain appropriate measures for the purpose of preventing certain anticompetitive practices in these sectors.

Annex A

Index for Classification of Energy Services

Draft - For Discussion Purposes Only

The purpose of this index is to identify W/120 and corresponding Provisional CPC categories that contain energy services. This exercise does not prejudge the questions of whether all possible energy service activities are listed or which of these activities fall within the scope of the GATS.

Reference to energy source (e.g., oil, natural gas, hydroelectric, geothermal, solar, wind, tidal, wave energy, and coal) in this Index is technology neutral unless otherwise specified.

W/120 Classification		Prov. CPC Numbers	Provisional CPC Heading
1.A.	Professional Services	8612, 8619	Legal advisory and representation services in statutory procedures of quasi-judicial tribunals, boards, etc.; and Other legal advisory and information services.
		8671	Architectural services
		8672	Engineering services

		8673	Integrated engineering services
1.B.	Computer and Related Services	84	Computer and Related Services
1.C	Research and Development Services	851	Research and experimental development services on natural sciences and engineering
1.E.	Rental and Leasing Services, without Operator	83107, 83109	Rental and leasing services without operators relating to construction machinery and equipment or other machinery and equipment, without operator (note: rental of equipment *with* operator is classified under construction services, CPC 518).
I.F.	Other Business Services	865	Management consulting services
		866	Services related to management consulting
		8676	Technical testing and analysis services

	883	Services incidental to mining
	884, 885	Services incidental to manufacturing
	887	Services incidental to energy distribution
	8675	Related scientific and technical consulting services
	886	Maintenance and repair of equipment
	8790	Other Business Services
3. Construction and Related Engineering Services	511	Pre-erection work at construction sites
	512	Construction work for buildings
	513	Construction work for civil engineering
	515	Special trade construction work
	516	Installation work
	518	Renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator
4. Distribution Services	621	Commission agents' services

		622	Wholesale trade services
		632	Non-food retailing services
		6111, 6113, 6121	Sales of motor vehicles, motorcycles and snowmobiles, and related parts and accessories
		613[1]	Retail sales of motor fuel
5.	Educational Services	924, 929	Adult education and other education services
6.	Environmental Services[2]	940	Sewage and refuse disposal, sanitation and other environmental protection services
7.B.	Financial Services[2]	8112	Financial leasing services
		8113	Other credit granting services
		81199	Intermediation services not elsewhere classified
		8132	Services related to securities markets

[1] CPC 613, retail sales of motor fuel, was omitted from W/120.

[2] The relationship between environmental and financial services and energy activities is still under discussion.

		81339	Other services auxiliary to financial intermediation not elsewhere classified
11.	Transportation Services including	7112	Freight transportation by railway
		7123	Freight transportation by road
		713	Transport services via pipeline

STEPTOE & JOHNSON
ATTORNEY AT LAW

1330 Connecticut Avenue, NW
Washington, DC 20036-1795

Telephone 202-429-3000
Telephone 202.429.3902
Facsimile 202-429-3902
www.steptoe.com

Sheldon E. Hochberg
202.429.6218
shochber@steptoe.com

Inv. Nos. A-427-818, C-427-819-412-820, C-412-821, A-428-828, C-428-829, A-421-808 & C-421-809

PUBLIC DOCUMENT

April 11, 2001

VIA HAND DELIVERY
The Honorable Donald L. Evans
Secretary of Commerce
Attn: Import Administration
Central Records Unit, Room 1870
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Re: Antidumping and Countervailing Duty Investigations: Low Enriched Uranium From France, Germany, the Netherlands and the United Kingdom: Scope of Investigation and Questionnaires; Response to April 5, 2001 Letter of the Ad Hoc Utilities Group

Dear Secretary Evans:

This letter is filed on behalf of USEC Inc., and its wholly owned subsidiary United States Enrichment Corporation, petitioners in the above-captioned investigations (collectively "USEC" or "Petitioner"), in response to the letter of April 5, 2001, submitted by Shaw Pittman on behalf of the Ad Hoc Utilities Group * * *

ST/ESA/STAT/SER.M/77NER.1.0

DEPARTMENT OF ECONOMIC AND SOCIAL AFFAIRS STATISTICS DIVISION

STATISTICAL PAPERS SERIES M No.77, Ver. 1.0

Central Product Classification (Cpc)

Version 1.0

[Seal Omitted] UNITED NATIONS ● NEW YORK, 1998

* * * * *

Explanatory notes

22. Explanatory notes are provided for sections 5 to 9 of CPC Version 1.0. In the revision process, the description of the content of many subclasses was clarified and improved. Furthermore, the notes have been changed from descriptive text into lists of products providing illustrative examples of what is included and what is not included in a certain CPC code. As these lists are not exhaustive, users may wish to request guidance from the United Nations Statistics Division on interpreting the content of CPC subclasses. The problems that are referred to the Statistics Division will provide the basis for the expansion and refinement of the explanatory notes in future revisions. Users of CPC version 1.0 should be aware that the classification and its explanatory notes were developed solely for statistical purposes. Therefore, if reference is made to this classification in a legal text, such as a contract, those who prepared the text are responsible for interpreting and explaining their use of the classification.

Future work

23. As with any product classification, particularly in the early years of its development, CPC will need to be revised at relatively frequent intervals as future experience is gained with its use. It is expected that the detail of the goods part of the classification will be further examined and that the higher level structure of the whole classification will be further reviewed. It should be possible to produce a reference list of goods for transportation, as has been done for wholesale and retail trade. It is also hoped that in the next few years, after countries

have undertaken further work, it will be possible to develop the classification in greater detail for financial intermediation services and telecommunication services. The are of public administration will be revised in the light of ongoing revisions to the United Nations Classification of the Functions of Government (COFOG).[7]

* * * * *

[7] *Classification of the Functions of Government*, Statistical Papers, Series M, No. 70 (United Nations publication. Sales No. E.80.XVII.17).

[FOR PUBLIC FILE]

[Logo Omitted]

UNITED STATES DEPARTMENT OF COMMERCE
International Trade Administration
Washington, D.C. 20230

[5/7/01]

A-427-818, A-428-828,
A-421-808, A-412-820,
C-427-819, C-428-829,
C-421-809, C-412-821
POI: 10/1/99 - 9/30/00;
1/1/99 - 12/31/99

PUBLIC DOCUMENT
DAS II/VI

MEMORANDUM TO: Bernard Carreau [BTC 5/7/01]
DAS Group II
AD/CVD Enforcement

THROUGH: Melissa Skinner [MS 5/7/01]
Office Director
Group II, Office VI
AD/CVD Enforcement

FROM: The Uranium Team

SUBJECT: Low Enriched Uranium from France, Germany, the Netherlands, and the United Kingdom; Comments on the Scope of the Investigations

DATE: May 7, 2001

Background

As stated in our January 5, 2001, notices of initiation, we set aside a period for interested parties to raise issues regarding product coverage in these cases.[1] Since our initiation, we have received numerous comments regarding the scope of these investigations.

On January 17, 2001, the Department of Commerce (the Department) received comments regarding the scope of the investigations from Cogema, and Eurodif, respondents in the French antidumping and countervailing duty investigations, and the Urenco consortium, respondents in the German, Dutch, and British antidumping and countervailing duty investigations (collectively, the respondents) and the United States Enrichment Corporation (USEC), the petitioners. On January 23, 2001, petitioners filed comments regarding respondents' comments on the scope. In addition, on April 5, 2001, the Ad Hoc Utilities Group (Utilities Group)[2] submitted comments in response to submissions by the petitioners commenting on the scope of the Department's investigation and the content of the Department's questionnaire to the respondents. On April 11, 2001, the petitioners submitted comments addressing the issues raised in a

---

[1] *Notice of Initiation of Antidumping Duty Investigations: Low Enriched Uranium from France, Germany, the Netherlands, and the United Kingdom*, 66 FR 1080, 1081 (Jan. 5, 2001); *Notice of Initiation of Countervailing Duty Investigations: Low Enriched Uranium from France, Germany, the Netherlands, and the United Kingdom*, 66 FR 1085, 1086 (Jan. 5, 2001).

[2] In accordance with 777(h) of the Act, the administering authority provides the opportunity for industrial users (like the Utilities Group) to provide comment.

letter from the Utilities Group. Finally, on May 3, 2001, the Utilities Group submitted additional comments.

Interested Party Comments

Respondents argue that the enrichment contracts under investigation cover purchases of enrichment services, not the sales of goods. Respondents also note that the applicable antidumping law is structured to compare sales of subject merchandise (*i.e.*, goods) in the foreign country market with sales of subject merchandise in the United States. They then note that while the subject merchandise is low enriched uranium (LEU), virtually all contracts with utilities are structured as contracts for enrichments services. In support of their argument, they state that standard enrichment contracts are entitled "Enrichment Services Contracts," which cover the supply of uranium enrichment services. To illustrate this point further, the respondents note that the utilities purchase and arrange for the conversion of the uranium, ship the uranium to the respondents for enrichment services, and then arrange for further processing of the LEU, all without forfeiting ownership rights to the uranium. In other words, they add, title to the LEU for the transactions in question remains at all times with the utility and does not pass to the enrichers. Respondents also cite, as evidence that utilities are contracting for services, the fact that payment for most enrichment contracts is based on separative work units (SWU), not LEU. To further support their assertions, respondents cite to a case from the U.S. Court of Federal Claims, in which the U.S. government, on behalf of USEC, stated, and the court agreed, that the enrichment provided by the petitioners to their customers was in fact a service, not a good, as well as USEC submissions in the suspen-

ded antidumping investigation on uranium from Kazakhstan.[3]

Respondents also cite to the Department's final determination in *Forged Undercarriage Components from Italy*,[4] and analogize enrichers of uranium to forgers of steel. They note that the Department concluded in that determination that because title to the raw materials for the forging of steel did not pass to the forger, and because the forger merely returned the semi-finished products to the suppliers of the raw material and charged only for forging services, these services could not be considered as sales of merchandise. Like the forgers, respondents argue, the utilities are merely providing uranium to the enricher and then purchasing enrichment services from these enrichers. As they explain, the output of their activity is not a tangible good; rather, the output is enrichment, measured and sold in intangible SWU.

Respondents conclude that it logically follows that enrichers are providing enrichment services, not sales of merchandise; thus, the Department does not have the statutory authority to include these types of sales of enrichment within the scope of these investigations.

In contrast, the petitioners argue that the Department should include within its investigation all sales

---

[3] *See Barseback Kraft AB v. U.S.*, 36 Fed. Cl. 691, 705 (1996). Respondents also cite to, Letter from R. Kingdon to William Daley in *Uranium from Kazakhstan*, (December 8, 1997), where they claim that USEC acknowledged that enrichment of uranium is a service for purposes of U.S. trade law.

[4] *Forged Undercarriage Components From Italy: Final Determination of Sales at Not Less Than Fair Value*, 49 FR 7137 (1984), (*Forged Undercarriage Components*).

made by enrichers to utility companies because all transactions involve the sale of merchandise. Moreover, petitioners argue that they are clearly producers of tangible goods. They cite several reasons in support of their argument. First, petitioners state that the production activities of enrichers represent the final stage of production of LEU. This final stage, they add, accounts for approximately 60 percent of the value of the LEU, which confers country of origin on the imported merchandise. Second, petitioners argue that the enrichers produce LEU from a fungible feedstock of uranium and do not deliver back to the utility the enriched form of the specific converted uranium delivered by the utility. Therefore, they maintain that, at the time the utility receives the LEU from the enricher, the enricher takes title to the converted uranium that was delivered by the utility to the enricher (*i.e.*, enrichers generally do not use the same uranium supplied by the utility to produce the LEU they ship to that utility.) Third, the petitioners point out that the enrichers can deliver the requisite amount of LEU to the utility customer regardless of whether the enricher produced or purchased the LEU (*i.e.*, enrichers can meet their contractual delivery requirements from any source, including enrichers' own purchases of LEU from other sources, and are not required to use the uranium supplied by the utility) which they argue, thwarts respondents' claim that utilities maintain title to the uranium throughout the whole enrichment process. Fourth, petitioners state that there is no difference between LEU that is imported into the United States pursuant to a contract for consideration to be paid in all cash, and a contract for cash and uranium feedstock, because the same enrichment process underlies both transactions; furthermore, it is the en-

richer's ultimate obligation to provide the requisite LEU to the utility regardless of how it is produced and paid for. Fifth, petitioners contend that enrichers may produce LEU for a particular utility customer even before that customer has delivered the requisite amount of uranium agreed upon under its contract, which provides further support for the argument that utilities do not maintain ownership and control over the uranium. Six, petitioners argue that in the *Uranium from Kazakhstan* proceeding, USEC has taken the same position as it has in the instant proceeding, *i.e.*, that enrichers sell LEU, negating respondents claim that petitioners perform a "value-added service." Moreover, petitioners assert that USEC's quote was taken out of context, and the position that USEC took in that proceeding is not inconsistent with the position taken by USEC in this proceeding.[5]

Finally, with regard to respondents' citation of language found in *Forged Undercarriage Components*, petitioners discredit respondents' assertion that the Department maintains that tolling activities are "services" beyond the scope of an investigation. First, they state that the Department reached a contrary conclusion in a subsequent case, which concluded that tolled sales were proper to include within the scope of an investigation.[6] Second, petitioners note that a key aspect of Department conclusion in *Forged Undercarriage Components*, was that title to the materials supplied by the customer never passed to the forger. Furthermore, they stated that the forger simply returned semi-finished products

---

[5] Petitioners cite to another filing in the same proceeding where they articulated the position that enrichers sell LEU.

[6] *See Final Determination of Sales at Less than Fair Value: Brass Sheet and Strip from Canada*, 51 FR 44319, 44320 (December 9, 2001).

to the customer after having provided forging services. However, petitioners conclude that in the instant case, in contrast to *Forged Undercarriage Components*, title to the uranium supplied by the utilities ultimately passes to the enricher upon the delivery of the LEU to the customer.

Industrial User Comments

In an April 5, 2001 letter, the Utilities Group attempts to counter many of the arguments petitioner made regarding the scope of the investigation, specifically arguing that sales of LEU should be treated as purchases of enrichment services. The Utilities Group argues that the Department must only compare sales of subject merchandise, not services.

The Utilities Group first notes that the applicable antidumping law is structured to compare sales of subject merchandise (*i.e.*, goods) in the foreign country market with sales of subject merchandise in the United States. They then note that, while the subject merchandise is LEU, virtually all contracts with utilities are structured as contracts for enrichments services. As evidence that they are contracting for services, the Utilities Group cites the titles of the contracts, the fact that payment is based on SWU, and the fact that the utilities: 1) supply the uranium; 2) retain title through the enrichment process; and 3) can specify that the uranium used to make the LEU be of a certain country of origin.

Additionally, the Utilities Group argues that enrichment is internationally recognized as the purchase of a service. They also argue that in the context of GATS negotiations the U.S. government has recognized that enrichment is a service. Respondents state that in the United Nations Central Product Classification (CPC)

system, contracts for enrichment would be classified as contracts for manufacturing services, or services rendered on a fee or contract basis by units mainly engaged in the production of transportable goods, and services typically related to the production of such goods. The Utilities Group also states that the CPC has been adopted by the WTO to identify service sectors for the GATS. They further note that, under the definition of services in the energy sector in a recent U.S. government communication to the WTO, enrichment would be considered a service. The Utilities Group argues that, if the Department were to determine that enrichment contracts covered the sale of goods, the Department would be taking a view contrary to the position of the U.S. government in the GATS context.

In an April 11, 2001 letter, the petitioners address several of the points raised by the Utilities Group in its April 5, 2001 letter regarding scope. Petitioners first comment on the Utilities Group's point that enrichment contracts cover the purchase of services rather than the sale of goods. Petitioners point out that no matter how a particular process may be viewed in other contexts, what is germane to this discussion is how the enrichment process is viewed under the trade law. They note that in 19 U.S.C. § 2114b(5) (part of the 1984 International Trade and Investment Act), services are defined as "economic activities whose outputs are other than tangible goods."[7] They further argue that the intent of the law was to ensure that production of tangible goods, and the trade thereof, would not be removed from the protection of the trade laws applicable to goods. They fur-

---

[7] Title III of the Trade and Tariff Act of 1984, Pub. L. No. 98-573 § 306(a)(5) (Oct. 30, 1984).

ther note that under the trade law, there is no meaningful distinction between LEU that is imported into the United States pursuant to contracts where the consideration paid for the LEU is all in cash or pursuant to a contract where the consideration consists of cash or uranium feedstock, because the same enrichment process underlies both transactions. To do otherwise, they argue, would be contrary to the applicable law and the plain language of 19 U.S.C. § 2114b(5).

Petitioners further note that the UN CPC system cited by the Utilities Group is irrelevant to determining whether enrichers provide a service or sell a good under the applicable trade laws. They note that the CPC itself states that it was designed merely for statistical purposes. On April 27, 2001, petitioners submitted comments on the CVD Preliminary Determination, and also addressed the issue of the scope of the investigation relating to certain comments made by respondents. Petitioners contends that respondents plainly produce merchandise, because it plainly produces LEU.

In a May 3, 2001, the Utilities Group responded to the petitioners' arguments laid out in their April 11 and April 27 letters. In this letter, the Utilities Group argues that the definition of services in 19 U.S.C. § 2114b does not authorize the application of the antidumping and countervailing duty laws to trade in enrichment services, and that the nature of enrichers' production activities and the fungibility of uranium feed do not change the character of the sales transactions at issue. The Utilities Group argues that the definition of services stated in section 2114b(5) is specifically limited to only that section. They further argue that the section is limited to establishing a trade development program for

service industries, and is not related to administering the antidumping or countervailing duty laws. The Utilities Group notes that USEC argues that enrichment is not a service because it results in a tangible good. They add, however, that some of the services included in the illustrative list of services provided in the statute, such as construction, design or engineering, also result in tangible goods, but are still categorized as a service.

Department Position:

Respondents do not dispute that LEU is a good subject to the AD/CVD law where the transaction involves the enrichment of feedstock owned by the enrichment company. Instead, respondents argue only certain LEU entering the United States should be treated as non-subject merchandise because in those transactions respondents only provide enrichment "services," and therefore the merchandise should not be considered a "good" within the purview of the AD/CVD law. We disagree.

First, respondents raise the issue of whether certain LEU is subject to the AD/CVD law in the context of the Department's scope determination. However, the Department determines whether specific merchandise is subject to an investigation based upon the written description in the petition. If the petition is ambiguous or defines the product too broadly or narrowly, the Department may reconsider the parameters of the investigation. *See e.g., Initiation of Antidumping and Countervailing Duty Investigations: Butter Cookies in Tins from Denmark*, 63 Fed. Reg. 10822, 10823 (Mar. 5, 1998). Section 771(25) of the Tariff Act defines subject merchandise as "the class or kind of merchandise that is within the scope of an investigation, a review, a suspen-

sion agreement, an order under this subtitle or section 1303 of this title, or a finding under the Antidumping Act, 1921." 19 U.S.C. § 1677(25). In cases in which it is unclear or ambiguous as to whether specific merchandise is within the class or kind of merchandise, the Department employs a five-factor analysis to make its determination, known as "Diversified Criteria." *See* 19 C.F.R. 353.225(k)(2). The primary factor in the Department's analysis is the physical characteristics of the product; other factors include the expectations of the ultimate purchasers; the ultimate use of the product; the channels of trade in which the product is sold; and the manner in which the product is advertised and displayed.

No party in these investigations has argued that LEU has different physical characteristics based upon how the sale is structured. To the contrary, the physical characteristics of all LEU is essentially the same. In addition, respondents make no argument that certain LEU is a separate class or kind based upon the way in which the sale is structured because of differences in the expectations of the ultimate purchasers, the ultimate use of the product, the channels of trade in which the product is sold or the manner in which the product is advertised and displayed. We find that there is no clear dividing line—indeed there is no discernible difference—between LEU regardless of how the transaction is structured.

Second, no party disputes that LEU is a product. Nor does any party dispute that France, Germany, the United Kingdom and the Netherlands is the respective country-of-origin for all LEU produced through enrichment and exported to the United States, regardless of

how the sale transaction is structured. The purpose of the country-of-origin analysis is to determine whether substantial transformation has occurred, in turn producing a *product* from the country in which the substantial transformation takes place. Nothing in the law prohibits a finding of substantial transformation based upon a manufacturing process, such as enrichment, provided the manufacturing process is significant or substantial in nature.

In these investigations, it is undisputed that enrichment accounts for approximately 60 percent of the value of LEU. *See* "Determination of Industry Support for the Antidumping and Countervailing Duty Petitions on Low Enriched Uranium from France, Germany, the Netherlands, and the United Kingdom," (December 27, 2000) (*Industry Support Memorandum*). In the initiations of these investigations, we found that "USEC performs all of the processes necessary for enriching converted uranium." *Industry Support Memorandum* at 4.[8] No party in these investigations makes the claim that the respective respondent does not perform the necessary processes for enriching converted uranium. We also found that enrichment is a major manufacturing process in the production of LEU, responsible for a substantial portion of the total value of LEU; and that enrichment is a necessary process for the production of

---

[8] In our notice of initiation we invited parties to comment on scope issues raised by these investigations. However, to the extent that some of the comments on scope issues re-argue the determination of industry support for the petition, we draw parties attention to Section 702(c)(4)(E) and 732(c)(4)(E) which states in pertinent part: "after the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered."

LEU. Once again, no party in these investigations disputes these conclusions, nor the underlying facts upon which they are based. In sum, we find no basis to modify the scope to exclude certain shipments of LEU from these investigations based upon how the sale of LEU is structured.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-427-818]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Low Enriched Uranium From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 13, 2001.

FOR FURTHER INFORMATION CONTACT: Edward Easton or Gabriel Adler, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW Washington, DC 20230; telephone: (202) 482-3003 or (202) 482-3813, respectively.

The Applicable Statute and Regulations: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2000).

Preliminary Determination: We preliminarily determine that low enriched uranium is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The esti-

mated margins of sales at LTFV are shown in the Suspension of Liquidation section of this notice.

Case History

This investigation was initiated on December 27, 2000.[9] *See Initiation of Antidumping Duty Investigations: Low Enriched Uranium from France, Germany, the Netherlands, and the United Kingdom*, 66 FR 1080 (January 05, 2001) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred.

In the initiation notice, we invited interested parties to comment, by January 17, 2001, on the scope of this investigation. On January 17, 2001, we received comments from Eurodif, S.A. (Eurodif), the sole producer/exporter of subject merchandise, and its owner, Compagnie Generale des Matieres Nucleaires (Cogema) (collectively, "Eurodif/Cogema" or "the respondent"), as well as from the petitioners. In addition, on April 5, 2001, we received comments from the Ad Hoc Utilities Group (Ad Hoc Group), an industrial user/consumer of subject merchandise. Our analysis of these comments can be found in a memorandum to Bernard Carreau, dated May 7, 2001, on file in the Central Records Unit, Room B-099, of the Main Commerce Building.

On January 22, 2001, the United States International Trade Commission (ITC) preliminary determined that there is a reasonable indication that an industry in the

---

[9] The petitioners in this investigation are USEC Inc. and its wholly-owned subsidiary, the United States Enrichment Corp. (collectively USEC), and the Paper, Allied-Industrial, Chemical and Energy Workers International Union, AFL-CIO, CLC, Local 5-550 and Local 5-689 (collectively PACE).

United States is threatened with material injury by reason of imports from France, Germany, the Netherlands, and the United Kingdom of low enriched uranium. *See Low Enriched Uranium from France, Germany, the Netherlands, and the United Kingdom,* 66 FR 8424 (January 31, 2001).

On January 29, 2001, the Department invited interested parties to submit comments on model matching criteria and proposed modifications to the standard questionnaire. We received comments from Eurodif/ Cogema and the petitioners on January 31, 2001. On February 5, 2001, after considering those comments, the Department requested additional information Eurodif/ Cogema for purposes of formulating and antidumping questionnaire appropriate to the unique nature of the uranium industry. We received a response to that request on February 12, 2001. After considering this information, on February 29, 2001, we issued an antidumping questionnaire to Eurodif/Cogema.[10]

The respondent submitted is initial responses to the Department's questionnaire in April and May of 2001. After analyzing these responses, we issued supplemental questionnaires to the respondent to clarify the initial

---

[10] Section A of the antidumping questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, then a listing of sales in the most appropriate third country market. Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation.

questionnaire responses or to request more complete responses to the initial questions.

On April 18, 2001, the Department postponed, by 50 days, the preliminary determination in this case (from May 16, 2001 to July 5, 2001) in accordance with section 733(c) of the Act and 19 CFR 351.205(b)(2). *See Low Enriched Uranium From France, Germany, The Netherlands, and the United Kingdom: Notice of Extension of Preliminary Antidumping Duty Determinations*, 66 FR 20969 (April 26, 2001).

Postponement of Final Determination

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. Section 351.210(e)(2) of the Department's regulations requires that exporters requesting postponement of the final determination must also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period until not more than six months. On July 2, 2001, Eurodif/Cogema, the sole producer/exporter of subject merchandise, made such a request. In its request, the respondent consented to the extension of provisional measures to no longer than six months. Since this preliminary determination is affirmative, and there is no compelling reason to deny the respondent's request, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register**.

Period of Investigation

The period of investigation (POI) is October 1, 1999 through September 30, 2000. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, December 2000).

Scope of Investigation

The scope of this investigation covers low enriched uranium (LEU). LEU is enriched uranium hexafluoride (UF_6) with a U^{235} product assay of less than 20 percent that has not been converted into another chemical form, such as UO_2, or fabricated into nuclear fuel assemblies, regardless of the means by which the LEU is produced (including LEU produced through the down-blending of highly enriched uranium).

Certain merchandise is outside the scope of this investigation. Specifically, this investigation does not cover enriched uranium hexafluoride with a U^{235} assay of 20 percent or greater, also known as highly enriched uranium. In addition, fabricated LEU is not covered by the scope of this investigation. For purposes of this investigation, fabricated uranium is defined as enriched uranium dioxide (UO_6), whether or not contained in nuclear fuel rods or assemblies. Natural uranium concentrates (U_3O_8) with a U^{235} concentration of no greater than 0.711 percent and natural uranium concentrates converted into uranium hexafluoride with a U^{235} concentration of no greater than 0.711 percent are not covered by the scope of this investigation.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2844.20.0020. Subject merchandise may also enter under 2844.20.0030, 2844.20.0050, and 2844.40.00. Although the HTSUS sub-

headings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

The Ad Hoc Group contends that certain sales subject to these investigations are in actuality transactions for separative work units (SWU) of enrichment, and therefore constitute the provision of services, not the production or sale of goods subject to the antidumping law.

In particular, the Ad Hoc Group focuses upon the relevant sale to be used in determining whether LEU is sold at less than fair value. The Ad Hoc Group contends that sales of SWU or enrichment do not constitute sales of subject merchandise. They argue further that because "toll-produced LEU" is consumed by the parties who contract for the tolling, such LEU is never sold in the United States. The Ad Hoc Group cites the Department's tolling regulation and practice to support its conclusion that such sales should be excluded from the scope of these investigations.

This is an exceptionally complicated issue. Based upon our analysis of the record and the arguments of the parties, we preliminarily determine that all LEU entering the United States from Germany, the Netherlands, the United Kingdom, and France is subject to these investigations regardless of the way in which the sales for such merchandise are structured.[11] This preliminary determination is based on several factors. First, no party disputes that LEU entering the United States is a good. As the product yield of a manufacturing opera-

---

[11] This statement is limited to imports of LEU that were enriched in the respective countries.

tion, LEU is a tangible product. Moreover, under the U.S. Customs regulations, any item that is within a tariff category of the Harmonized Tariff System constitutes merchandise for customs purposes. See 19 CFR 141.4 (2000). In this case, LEU is normally classified under HTSUS 2844.20.0020, but also satisfies three other HTSUS classifications described as enriched uranium compounds, enriched uranium, and radioactive elements, isotopes, and compounds.

Second, it is well established that the enrichment process is a major manufacturing operation that is required to produce LEU. No party disputes that the enrichment operation constitutes substantial transformation of the uranium feedstock, nor does any party dispute that the country of origin for LEU is based upon where that substantial transformation takes place. Thus, the LEU exported from Germany, the Netherlands, the United Kingdom, and France are products of those respective countries, and are therefore subject to these investigations.

Third, in these investigations there are significant volumes of LEU sold pursuant to contracts that expressly provide separate prices for SWU and feedstock, and no party disputes that such sales constitute sales of subject merchandise.[12] Rather, it is only for those transactions in which utility companies arguably obtain LEU through separate transactions of SWU and feedstock from separate entities that the Ad Hoc Group contends that such LEU entering the United States cannot be subject to the antidumping law. The Department has considered whether it would be appropriate to include in

[12] This is also true of a contract for enriched uranium product (EUP) that provides one price for both components.

these investigations only the former type of transactions and exclude the latter. We believe, however, that, based on the petitioners' arguments, discussed below, there is little substantive commercial difference between these types of transactions, and, therefore, we have preliminarily included both. Simply because an unaffiliated customer purchases subject merchandise arguably in the form of two transactions, instead of a single, conventional type of transaction, does not mean that the merchandise entering the United States is not subject to the antidumping law. The purpose of the antidumping law is to provide a remedy to U.S. industries injured by unfairly priced goods. Subject merchandise purchased in the form of two transactions, instead of one, does not eliminate the possibility of unfair pricing, nor does it alleviate the need for the remedy established under the antidumping law.

Fourth, contrary to the Ad Hoc Group's claim, the tolling regulation does not provide a basis to exclude merchandise from the scope of an investigation. The purpose of the tolling regulation is to identify the seller of the subject merchandise for purposes of establishing export price, constructed export price, and normal value. Under § 351.401(h), therefore, the Department focuses upon which party controls the relevant sale of the subject merchandise and foreign like product. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from Taiwan, 64 FR 15493, 15498 (Mar. 31, 1999)). Thus, under the tolling regulation the issue is not whether the LEU in question is subject to the antidumping law, but rather who is the seller of the subject merchandise for determining U.S. price and normal value or, more specifically, what is the appropriate way in which to value subject

merchandise and foreign like product. To the extent that sales of subject merchandise are structured as two transactions, the Department would combine such transactions to obtain the relevant price of subject merchandise, or normal value, as appropriate. On the other hand, to the extent that a company located in the United States sells the subject merchandise that is toll-processed in a country subject to investigation, the company in the United States would be the seller of subject merchandise. Even if in these cases we considered the utilities to be the producers of the subject merchandise within the meaning of the tolling regulation, this would not mean the antidumping law is not applicable. Regardless of the appropriate seller identified or how the sales are structured, the merchandise entering the United States is subject to the antidumping law.

The petitioners maintain that enrichers are the sellers of LEU in both types of contracts—either as an exchange of SWU and uranium feedstock for cash, or as an exchange of SWU for cash and a swap of uranium feedstock. The petitioners contend that the two transactions are essentially identical. First, regardless of whether the utility company pays in cash or in kind for the natural uranium content, the petitioners point out that the LEU is delivered under essentially the same contract terms, including warranties and guarantees pertaining to the complete LEU product. Second, enrichers do not use the uranium feedstock provided by the utility companies. Instead, the petitioners note that the natural uranium is typically delivered shortly before, or even after, delivery of the LEU, making the delivery of such uranium a payment in kind for the natural uranium component of the LEU. Third, the petitioners contend that the utility company does not have control over the pro-

cess used to produce LEU that the utility company receives. Rather, the petitioners point out that the enrichers control the manufacture of LEU, as demonstrated by the fact that the product assay under the contract (transactional assay) differs from the product assay produced and delivered by the enricher (operational assay). According to the petitioners, the enricher makes the decision of the particular product assay based upon its own operational requirements and input costs. Taken together, these facts indicate that enrichers are in effect selling LEU under both types of contractual arrangements.

We have preliminarily treated the sales at issue as sales of subject merchandise for the reasons stated above and based upon the petitioners' arguments. In all transactions concerning LEU, regardless of how the sales are structured, the utility companies purchase LEU for use in the production and sale of electricity to consumers. Accordingly, the Department has established the value of the subject merchandise and foreign like product for purposes of determining U.S. price and normal value based on these transactions. We will further examine this issue for the final determination, and we invite comments on this issue. For purposes of these preliminary determinations, we have assigned a value to the natural uranium feedstock where no price was provided. We also invite comments from interested parties as to the valuation of the uranium feedstock for such transactions.

Fair Value Comparisons

To determine whether sales of LEU from France were made in the United States at LTFV, we compared the constructed export price (CEP) to the constructed

value (CV), as described in the Constructed Export Price and Normal Value sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weight-average CEPs and compared them to CV.

We note that during the POI, the respondent sold LEU pursuant to different types of contracts. For some contracts, the respondent undertook to manufacture and deliver LEU for a cash payment covering both the value of the enrichment component and the value of the natural uranium feedstock contained in the LEU (so-called EUP contracts). For other contracts, the respondent undertook to manufacture and deliver LEU for a cash payment covering only the value of the enrichment component; for the natural uranium feedstock component, the respondent received an amount of natural uranium equivalent to the amount used to produce the LEU shipped (so-called SWU contracts). For both types of transactions, the product manufactured and delivered by the respondent was LEU. For purposes of our antidumping analysis, we have translated prices and costs involved in SWU contracts to an LEU basis, increasing those values to account for the cost of the uranium feedstock involved. These adjustments are described in greater detail below.

Constructed Export Price

In accordance with section 772 of the Act, we calculated a CEP. Section 772(b) of the Act defines CEP as the price at which the subject merchandise is first sold in the United States before or after the date of importation by or for the account of the producer or exporter of the merchandise or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser, as ad-

justed under sections 772(c) and (d) of the Act. Consistent with this definition, we found that Eurodif/Cogema made CEP sales during the POI because the sales were made for the account of Eurodif/Cogema by the respondent's U.S. subsidiaries, Cogema, Inc. and Urangesellschaft USA, Inc. (UG Inc.), in the United States.

We calculated CEP based on packed prices charged to the first unaffiliated customer in the United States. For sales involving cash payments on a SWU basis, we translated the prices to an LEU basis by adding a value for the uranium feedstock used in the production of the LEU. This value was derived from the respondent's average cost of uranium feedstock purchases during the POI.

Section 351.401(i) of the Department's regulations provide that the date of sale will normally be the date of invoice, unless the material terms of sale are set on some other date. In the instant case, the material terms of sale are set on the date of the contract with the U.S. customer. Therefore, we based the date of sale on that date.

Because many of these contracts are long-term, spanning over five years, in most instances there have been only partial deliveries to date pursuant to POI contracts. Under the long-term contracts, the LEU provider is obligated to supply a percentage of the utility's overall requirements for given periods of time. The LEU provider does not know the specifications for the desired enrichment level of a given shipment of LEU until it receives delivery instructions for particular shipments of LEU. The desired enrichment level (or "product assay") determines the price for each specific delivery. Given the speculative nature of estimating the pro-

duct assays to be associated with future shipments of LEU for which no delivery instructions exist (as well as the fact that exchange rates, selling expenses, and costs of production for future deliveries pursuant to POI contracts would also have to be estimated), we have decided, preliminarily, to base the dumping analysis on completed deliveries only.

We note that two of the sales during the POI involved pre-existing contracts, which were amended during the POI. The petitioners have argued that, while the Department typically includes in its dumping analysis the entire sales quantity covered by an amended contract, the long-term nature of uranium contracts warrants including in the analysis only the additional quantities associated with the amendments. Further, the petitioners argue the Department should isolate the prices for the additional quantities called for by the amendments, segregating them from prices specified by the pre-existing contracts. For purposes of this preliminary determination, consistent with past practice, we have considered the amended contract to constitute a new sale, and have included in the dumping analysis all deliveries pursuant to the amended contract up to the date of the initial questionnaire response. We will examine this issue further at verification, and invite comment from interested parties for the final determination.

We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These include foreign inland freight from the plant to the French port of exit, international freight, international air freight/insurance, charges for shipment of samples, U.S. brokerage and

handling fees, and port charges. We also deducted any discounts from the starting price.

In addition, in accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including indirect selling expenses, credit expense, and inventory carrying costs.

Finally, in accordance with 772(d)(3) and 772(f) of the Act, we made a deduction for CEP profit. The CEP profit rate is normally calculated on the basis of comparison market sales and U.S. sales. In this case, there were no home market or viable third-country market sales of LEU during the POI. Therefore, we based the CEP profit calculation on the profit rate of the respondent's U.S. affiliate(s) that had a profit during the POI.

Normal Value

A. Selection of Comparison Markets

Section 773(a)(1) of the Act directs that NV be based on the price at which the foreign like product is sold in the home market (or third country market), provided that the merchandise is sold in sufficient quantities (or value, if quantity is inappropriate) and that there is no particular market situation that prevents a proper comparison with the CEP. The statute contemplates that quantities (or value) will normally be considered insufficient if they are less than five percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States. Eurodif/Cogema did not have a viable comparison market during the POI. Therefore, we have based NV on CV. Adjustments made in deriving

the CV are described in detail in the *Calculation of Normal Value Based on Constructed Value,* below.

B. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Section 773(e) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for selling, general, and administrative expenses (SG&A), profit, and U.S. packing costs. We calculated a weight-averaged cost of production (COP) for each control number of LEU, based on the sum of the cost of materials, fabrication and general expenses, and packing costs. We relied on the data submitted by the respondent in its supplementary questionnaire response except in specific instances where the submitted costs were not appropriately quantified or valued.

Specifically, we adjusted the reported costs as follows:

(1) We included the cost of centrifugal separation studies (which had been excluded by the respondent) in the calculation of the general and administrative expenses rate.

(2) We recalculated the net interest ratio on the basis of the consolidated interest expenses of Cogema's parent, CEA Industrie, for the year ended December 31, 1999.

For some deliveries pursuant to contracts based on SWU prices, the respondent's reported costs did not include a value for the uranium feedstock used in the production of the delivered LEU. To translate the reported

costs to an LEU basis, we added to the reported costs a value for the uranium feedstock used in the production of the LEU. This value was derived from the respondent's average cost of uranium feedstock purchases during the POI.

We note that, during the POI, Eurodif/Cogema obtained electricity from Electricite de France (EDF), an affiliated French utility. Section 773(f)(2) of the Act provides that the Department may value any element obtained from an affiliate at the market value of the element, if the transfer price does not fairly reflect a market value (the "transactions disregarded" rule). In the instant case, the rate charged by EDF to Eurodif/Cogema is below that charged to other large industrial users. However, the record indicates that Eurodif/Cogema is by far the largest consumer of electricity in France. The rate charged by EDF to Eurodif/Cogema appears to be commensurate with the respondent's massive consumption of electricity. Moreover, there is evidence on the record that at least one unaffiliated European electricity provider offered electricity to Eurodif/Cogema at rates even lower than that charged by EDF. Given the facts of this case, we have preliminarily determined to rely on the transfer price for electricity reported by Eurodif/Cogema. We will examine this further at verification.

Because there is no viable comparison market for Eurodif/Cogema, and hence no actual company-specific profit data available for Eurodif/Cogema, we calculated profit in accordance with section 773(e)(2)(B)(iii) of the Act and the Statement of Administrative Action (SAA) at 841. (Where, due to the absence of data, the Department cannot determine amounts for profit under alter-

natives (i) or (ii) of section 773(e)(2)(B) of the Act or a "profit cap" under alternative (iii) of section 773(e)(2)(B) of the Act, the Department may apply alternative (iii) on the basis of the facts available.) In this case, we based CV profit on the profit rate on the 1999 financial statements of CEA Industrie, a holding company for the industrial interests of the French Atomic Energy Commission, which consolidates the financial results of the respondent and other companies associated with the French nuclear industry.

Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the export price (EP) or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is

more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731 (November 19, 1997).

In implementing these principles in this investigation, we obtained information from the respondent about the marketing stages involved in the reported U.S. sales, as well as in the home market,[13] including a description of the selling activities performed by the respondent for each channel of distribution. Given that all U.S. sales were CEP sales, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act.

In the U.S. market, the respondent sells to utility customers. After deducting expenses associated with the selling activities reflected in the price under section 772(d) of the Act (i.e., the expenses of Cogema Inc. and Urangesellschaft), we noted selling expenses associated with strategic planning and marketing, customer sales contact, production planning and evaluation, and contract administration. These expenses did not vary by U.S. channel of distribution. Therefore, we found all U.S. sales to be made at single LOT.

Home market selling expenses for CV were based on the selling expenses of Cogema for pre-POI home mar-

---

[13] Although the home market was not viable, for the purpose of calculating CV, the respondent provided POI home market selling expenses (related to pre-POI contracts) in its questionnaire responses.

ket contracts. We have no basis for attributing different expenses to different channels of distribution. Therefore, we found a single LOT of trade in the home market.

The respondent generally performs the same kinds of selling functions in both markets. Although the respondent described different degrees of selling activities associated with home market sales and U.S. sales by characterizing the levels of different activities as "low," "medium" or "high," the respondent did not explain the distinctions between these terms with respect to the different categories of selling activities, leaving these terms ambiguous. Therefore, we have no basis for concluding whether or not a CEP offset to normal value is appropriate and we did not calculate a CEP offset. We will examine this further at verification.

Currency Conversions

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on exchange rates in effect on the dates of the U.S. sales, as obtained from the Federal Reserve Bank (the Department's preferred source for exchange rates).

Verification

In accordance with section 782(i) of the Act, we intend to verify all information relied upon in making our final determinations.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of low enriched uranium from France that are entered, or withdrawn from warehouse, for consumption

on or after the date of publication of this notice in the **Federal Register.**[14] We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Eurodif/Cogema.....	17.52
All Other.....	17.52

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceedings in this investigation in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination. If our final antidumping determination is affirmative, the ITC will determine whether the imports covered by that determination are materially injuring, or threaten mate-

[14] On July 3, 2001, the Department received comments from the respondent requesting that, in the event of an affirmative preliminary determination, the application of any cash deposit, bond or other security be limited to transactions involving the sale of enriched uranium, and exclude imports pursuant to so-called SWU contracts. We will consider these comments for the final determination.

rial injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. In the event that the Department receives requests for hearings from parties to more than one low-enriched uranium case, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and

provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will issue our final determination no later than 135 days after the date of publication of this notice in the **Federal Register**.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: July 5, 2001.

Faryar Shirzad,

Assistant Secretary for Import Administration.

BEFORE THE UNITED STATES DEPARTMENT
OF COMMERCE

Investigation Nos. A-427-818,
A-412-820, A-428-828, A-421-808,
C-427-819, C-428-829, C421-809,
C-412-821

IN THE MATTER OF LOW ENRICHED URANIUM FROM FRANCE, GERMANY, THE NETHERLANDS, AND THE UNITED KINGDOM

COMMON ISSUES BRIEF ON BEHALF OF THE AD HOC UTILITIES GROUP

PUBLIC VERSION

Stephan E. Becker
Nancy A. Fischer
Sanjay J. Mullick
Joshua D. Fitzhugh

SHAW PITTMAN LLP
2300 N Street, N.W.
Washington, D.C. 20037
(202)663-8000

October 22, 2001

Counsel for the Ad Hoc Utilities Group

* * * * *

I. THE FACTS: IT IS INCONTROVERTIBLE THAT ENRICHMENT CONTRACTS ARE CONTRACTS FOR SERVICES

By now, the Department is well familiar with the four steps in the production of nuclear fuel assemblies: (1) the purchase of natural uranium in the form of U3O8 or "yellowcake;" (2) chemical conversion of the U3O8 to natural uranium in the form of UF6; (3) enrichment of the UF6 in the uranium isotope U235 up to 5% weight percent U235; and (4) fabrication of fuel assemblies, with the fobricator converting the enriched UF6 into uranium oxide fuel pellets to be loaded into the fuel rods in the fuel assemblies. Each step requires a separate procurement contract, generally with separate parties occupying distinct market segments.

The Department also knows that the utilities themselves arrange for the vast majority of LEU they consume by entering into separate contracts for each element of the production process. Thus, typically, the utilities purchase U3O8 from mining companies, and then enter into toll service contracts with conversion service providers, enrichment service providers, and fabrication service providers that ultimately result in the production of the nuclear fuel assemblies for the utilities' own consumption. Where a utility enters into a contract for enrichment services, it pays the enricher only for that service.

Utilities also sometimes purchase LEU as a product, in which case it is commonly referred to as Enriched Uranium Product ("EUP"). Contracts for sales of EUP sometimes have a single, per kilogram price, and other

times contain separate prices for the enrichment services and uranium feed associated with the EUP that will be delivered. In both cases, however, the utilities pay the seller a price that reflects all elements of the full value of the LEU.

We trust that the Department has now had the opportunity to actually review copies of the different types of contracts and has seen the clear differences between contracts for enrichment services and contracts for EUP. Most importantly, enrichment services contracts by their own terms are for the sale and purchase of a service, and provide for payment only for that service (denominated in a price per "SWU"—separative work unit).[4] They do not contain a price that reflects all elements of the value of the LEU; there is no payment for the cost of the U3O8 nor the conversion services applied to that material.

In the view of the Utilities Group, *this fact alone should compel the Department to make a factual finding that enrichment services contracts are indeed contracts for services*. Other aspects of the transactions, and the manner in which they are treated in other legal contexts, simply reinforce what is already obvious. In particular:

- *The utilities retain ownership of the uranium feed provided to the enrichers.* The services contracts oblige the utilities to deliver the uranium feed to be enriched, and to retain title to that feed

---

[4] SWUs are not physical components of LEU. Rather, "SWU" is a measurement of the amount of energy expended to enrich uranium to a specific isotope level. As a unit of measurement, it is analogous to a "man-hour."

while it is in the possession of the enricher.[5] In that regard, enrichers do not treat the receipt of the feed as "payment in kind" or income of any type, nor report the utilities' feed held in inventory as assets belonging to the enrichers on their balance sheets.[6] As discussed in the Utilities Group's October 19th submission in the captioned antidumping investigations, established principles of contract law require the Department to respect the terms of the relevant contracts, and prohibit it from imputing terms that alter the contractual relationship established through those terms.[7]

- *The U.S. Court of Federal Claims has held repeatedly, at the urging of the U.S. government,*

---

[5] In the United States, where there is a potential for property taxes to be assessed on uranium feed held in inventory, the utilities remain liable for payment of that tax even when the feed is physically in the possession of the enricher.

[6] The Department has commented in a very similar case that "although a toller may take title to the product while it is physically in that company's production facility, it generally does so for purposes such as indemnification against the risk of loss (*e.g.*, fire, theft, non-payment by the company for whom the production is subcontracted, etc.)." *Taiwan Semiconductor Mfg. Co., Ltd. v. United States*, Consol. Ct. No. 98-05-02184, Slip Op. 00-48 (June 30, 2000) ("Remand Response") at n.7. This is the only manner in which enrichers conceivably could be considered to have title to the feed provided by the utilities. In the TSMC redetermination, the Department found this insufficient to support a finding that TSMC "owned" the subject merchandise.

[7] *See generally* Utilities Group's October 19, 2001 Rebuttal Comments on the Petitioner's Proposed "Effective Sale" methodology.

that enrichment contracts are for the sale of services, not goods.[8]

- *Not only the price terms, but also the non-price terms of EUP contracts are materially different from those of enrichment contracts.* In sales of EUP, for example, the utilities may only specify the assay of the LEU. For sales of enrichment services, the utilities specify both the assay of the LEU and the assay of the tails, which dictates the amount of uranium feed to be provided by the utility as well as the amount of work to be performed by the enricher on each unit of uranium feed. Under services contracts, the utilities may freely adjust the LEU assay, tails assay, and quantity of uranium feed for each delivery and

---

[8] The federal courts have ruled at least three times that enrichment services contracts provide for the sale of services, not goods. In *Barseback Kraft AB v. United States*, 36 Fed. Cl. 691, 705 (1996), *aff'd* 121 F.3d 1475 (Fed. Cir. 1997) the court held that

> [u]nder the contracts, the individual utilities supply the USEC with the uranium. The USEC then enriches the uranium and returns to the customer uranium enriched to the customer's specifications. The price paid by the customer is based on the number of SWUs required to enrich the uranium to the customer's specifications. It is clear, then, from the process itself, that the customers are contracting for services, not goods, from the USEC. The U.C.C. does not apply to services contracts—it applies to the purchase of goods.

See also Centerior Service Co. v. United States, 1997 U.S. Claims LEXIS 323, Slip Op. 95-103c (Dec. 29, 1997) (reaffirming the results of *Barseback* with respect to domestic utilities); *Florida Power & Light Co. v. United States*, 49 Fed. Cl. 656 (2001) (finding that utility service contracts for uranium enrichment are contracts for services). It would be extraordinary if the Department simply were to ignore these holdings.

generally do so depending on the relative prices of uranium feed, enrichment services, and tails flexibility.

- *The designated country of origin of the uranium feed must match that delivered by the utility.* Unless otherwise agreed, enrichment services contracts require enrichers to deliver finished LEU containing uranium feed material designated with the same country of origin as that delivered by the utility.[9]

The petitioner has previously argued that, because uranium feed is physically fungible, it cannot be known for certain whether an enricher is delivering LEU containing the exact same feed delivered by the utilities. In making this argument, the petitioner tries to imply that enrichers perform enrichment on uranium feed that the enrichers own, and effectively sell that feed to the utilities. The petitioner does not state this expressly, however, because it knows it is wrong. The enrichers hold inventories of uranium feed as bailees for their utility customers; if a particular delivery of LEU does not contain the exact same physical feed as that delivered by the utility, it is feed delivered to the enricher by another utility, which the enricher was also holding as a bailee.[10]

---

[9] However, the contracts generally do not specify in what country the LEU must be enriched, allowing USEC to deliver Russian or U.S. enrichment services to the utilities at its own option.

[10] Incidentally, the short lead times for delivery of feed cited by USEC are more typically offered by USEC itself, not the respondents, and the LEU delivered by USEC under enrichment contracts in any event usually is Russian LEU that it has had no role whatsoever in producing. USEC certainly does not "own" the uranium feed associated with the Russian LEU, as it is under a strict legal obligation to return

Consequently, the fungibility of the feed does not alter the actual commercial terms of the contracts or the nature of the transaction.[11]

Given the overwhelming evidence that enrichment contracts are in fact contracts for services, the next question is whether the governing statute authorizes the Department to deem those contracts, as a matter of law, to be sales of subject merchandise for purposes of the antidumping and countervailing duty investigations. As discussed below, the statute provides no such authorization.

---

that feed to Russia. USEC Privatization Act, 42 U.S.C. § 2297h. Thus, to ignore the commercial realities of how the industry deals with the fungibility of uranium feed would lead to the conclusion, among others, that USEC is illegally selling Russian-origin feed in the United States as well as essentially evading the Russian Suspension Agreement. It would be arbitrary for the Department to treat USEC's sales as sales of enrichment services for purposes of the Russian Suspension Agreement and the Privatization Act while treating the respondents' sales of enrichment services as sales of goods in these investigations.

[11] In its August 17 letter to the Department requesting that LEU be excluded from the scope of the investigations if imported for further processing and later export, USEC saw no problem in maintaining the identity of fungible LEU:

> Because of the fungible nature of the subject merchandise, the LEU contained in the exported uranium dioxide or fuel assemblies likely will not be the same LEU that was imported under certification. USEC intends for this exemption to apply so long as the importer can certify that an amount of LEU equivalent to the amount entered under certification . . . is exported from the United States . . . .

Letter from Steptoe & Johnson to Secretary Evans (Aug. 17, 2001) p. 6, n.5. This statement cannot be reconciled with USEC's argument that the fungibility of uranium feed prevents its ownership from being traced.

II. RELEVANT SALES ARE ONLY THOSE SALES THAT REFLECT ALL ELEMENTS OF THE VALUE OF THE SUBJECT MERCHANDISE

This is not the first time that the Department has confronted the issue of whether sales of manufacturing services can be treated as sales of subject merchandise. In fact, many of the same arguments advanced by the petitioner in support of its position that the respondents should be deemed to be selling goods instead of services were expressly rejected by the Department and the Court of International Trade in connection with the recent remand determination in *Taiwan Semiconductor Manufactv ring Co., Ltd. v. United States*, 143 F. Supp. 2d 958 (2001) (hereinafter "TSMC Case"). Because of the close factual similarities between that case and the pending investigations, we discuss that case in detail below.

The TSMC Case arose out of the Department's antidumping investigation of SRAMs (static random access memory semiconductor devices) from Taiwan. Taiwan Semiconductor Mfg. Co., Ltd. ("TSMC") is a company located in Taiwan that produced and sold SRAMs wafers to unaffiliated companies in the United States and Taiwan. Although some further processing of the wafers was required to convert them into finished SRAM's, the Department viewed the production of the wafers as the major physical operation in the manutacture of SRAMs.[12]

* * * * *

---

[12] Thus, the Department initially determined that TSMC, rather than another Taiwanese company * * * .

transaction to be treated as a sale in the United States where the seller does not control the price to the U.S. purchaser.[27]

B. Where the Utilities Arrange for Production of LEU Through a Series of Unrelated Transactions, There is No Relevant Sale of the Subject Merchandise

Where the utilities arrange for the production of LEU through a series of independent contracts with distinct suppliers of U3O8, conversion services, and enrichment services, at no point is there a "relevant sale" because there is no sale of subject merchandise that encompasses the value of all essential components of that merchandise, and no sale by a party capable of controlling the price of the subject merchandise for import into the United States.

1. Sales of Enrichment Services Are Not Sales of Subject Merchandise

As described above, the Court of International Trade has left no doubt that the sale of a service cannot qualify as a sale of subject merchandise for purposes of finding a relevant sale. The circumstances surrounding the pro-

---

[27] The Department cited this case for the following proposition:

> We normally consider the producer to be the party that sets the price to the United States except in cases where the producer does not know that the subject merchandise is ultimately destined for the United States. In those cases, *we find that a subsequent reseller controls the relevant sale, rather than the producer.*

(Emphasis added). TSMC Remand Response at n. 5. Consequently, it is not necessary for the seller to have any involvement in manufacturing the merchandise in order for its sales to be deemed the relevant sales.

vision of uranium enrichment services are even more compelling than those already ruled upon in the TSMC Case. The enrichment service providers do not produce the uranium feedstock; they do not take title to it; and they sell only their own enrichment services. The supplied uranium feed, like the design of the SRAM wafers, is provided to the enrichment service providers only in bailment. As with TSMC, the enrichers in these transactions sell manufacturing services, not subject merchandise.

Moreover, sales of enrichment services plainly do not encompass the entire value of the subject merchandise. The respondents are not paid for the U3O8 or its conversion, because those elements of the production process are separately arranged and paid for by the utilities.

2. There Are No Sales by a Party in a Position to Set the Price of LEU Sold on or into the U.S. Market

When entering into enrichment services contracts, the enrichers have no control whatsoever over the full cost of the LEU that is ultimately delivered, and indeed do not know that value. As such, they are not in a position to set the price of that LEU as sold in or to the U.S. market. For this reason as well, the sale of enrichment services can not be deemed by the Department to constitute a relevant sale of subject merchandise.

We emphasize that the Department cannot legitimately find a relevant sale where it would not normally find one simply because there are no other transactions in the chain of commerce that qualify.

III. THE DEPARTMENT'S PRELIMINARY ANTIDUMPING DETERMINATION WAS CONTRARY TO THE STATUTE AND THE DEPARTMENT'S OWN PAST PRACTICE

The Department's preliminary antidumping determinations in the pending investigations took a directly contrary approach to determining relevant sales as that followed in the TSMC Case and the other precedents discussed above. In its determination, the Department acknowledged that the Utilities Group "focuses upon the relevant sale to be used in determining whether LEU is sold at less than fair value," but instead of evaluating that issue, the Department reviewed factors more commonly viewed as pertinent to a decision on standing or on whether a * * * .

* * * * *

duty investigations. The memorandum purported to address the arguments of the Utilities Group and the respondents that sales of enrichment services are not sales of subject merchandise, and consequently are not subject to the antidumping and countervailing duty laws.

The Department's analysis of the issue in fact focused on a different question, namely whether LEU produced pursuant to a contract for LEU is physically different than LEU produced pursuant to a contract for enrichment services. The Department simply conducted its traditional scope analysis and employed the five-factor test known as "Diversified Criteria" (physical characteristics, expectations of the ultimate purchasers, the ultimate end use of the product, the channels of trade,

and methods of advertising and display),[39] leading to the conclusion that there was no difference between LEU delivered under contracts for enrichment services and contracts for LEU itself. This conclusion, however, does not lead to the presumption that sales of LEU and sales of enrichment services are the same.

Since there are no relevant sales of subject merchandise in circumstances where members of the Utilities Group contract with the respondents to provide enrichment services, LEU enriched through enrichment services contracts must be excluded from any imposition of antidumping or countervailing duties that may be applied as a result of this investigation.

B. No Legitimate Issue of "Circumvention" Has Been Properly Raised

The Utilities Group understands that the Department, at the urging of the petitioner, may be uncomfortable with the idea that subject merchandise entering the United Stales is not sold in the United States, and be concerned that the utilities' role in arranging for the production of their own LEU results in evasion of the trade remedy law. Nothing could be further from the truth. The manner in which utilities procure LEU (actually, the manner in which utilities procure nuclear fuel assemblies; LEU is only the third stage in a four-stage production process) longs predates both the privatization of USEC and the first trade remedy case involving uranium, which was initiated in 1989.

The four-step procurement process for nuclear fuel by electric utilities that own and operate nuclear plants

---

[39] 19 C.F.R. § 351.225(k)(2).

was established by necessity to accommodate the critical role in the process reserved by the Government to itself prior to the privatization of USEC in 1998.[40] Over time, the utilities learned through experience that controlling each of the four steps was important to minimize the risk of delays in fuel procurement and the risk of price fluctuations of the nuclear fuel components.

The existing 103 operating nuclear plants in the United States were ordered in the 1960's and 1970's. At the time a contract was signed with a nuclear reactor vendor, the utility also signed a contract with the U.S. Government (acting first through the Atomic Energy Commission, then the Energy Research and Development Agency, and finally the Department of Energy) for toll uranium enrichment services.[41] There was no alternative for U.S. utilities to obtain uranium enrichment services. Consequently, a long-term enrichment services contract with the U.S. Government was a *sine qua non* of demonstrating to State and federal regulators the ability to operate the nuclear plant economically and to obtain certificates of convenience and necessity and construction permits.

In some of the early nuclear plant procurements, the reactor vendors agreed to provide fuel for the first full reactor core and some number of reloads. The reactor

---

[40] As noted above, the four steps are the purchase of natural uranium in the form of U3O8, the arrangement of conversion of the U3O8 into UF6, the enrichment of the UF6, and the fabrication of that material into nuclear fuel assemblies.

[41] The first commercial nuclear plants actually leased enriched uranium from the U.S. Government prior to the Private Ownership Act, which amended Section 161 of the Atomic Energy Act in 1964 to allow utilities to own enriched uranium.

vendors were also the fuel fabricators. These separate contracts for fabricated fuel with the reactor vendors incorporated the utility's contract with the U.S. Government to provide the critical uranium enrichment step of the process. The reactor vendor undertook to procure the natural uranium and conversion services, deliver the UF6 to the U.S. Government enrichment facility, take delivery of the enriched UF6, and finally fabricate the fuel assemblies. In particular, Westinghouse Electric Corporation entered into a number of such contracts to provide the initial fabricated assemblies for the reactor core and the first few reloads. In the early 1970's. the price of natural uranium skyrocketed from approximately $5 per pound as U3O8 to over $40 per pound. Westinghouse has priced nuclear fuel assemblies based on uranium at much lower prices and had not contracted to obtain sufficient uranium at such prices. Westinghouse breached more than a dozen contracts, asserting commercial impracticability, impossibility of performance and force majeure. After years of litigation, Westinghouse was unsuccessful in its defenses and the cases eventually settled.

The utilities determined, based on this painful experience, that it was more prudent and reduced the risk of uncertainty of supply and price variations to control all four steps of the nuclear fuel procurement process. Utilities sought to diversify their supply by entering into a variety of long-term and short-term contracts for natural uranium, conversion services, and fuel fabrication services, and sought to avoid buying all of their fuel cycle needs from one supplier.

By 1984, the uranium fuel cycle markets had shifted into an oversupply position. Numerous utilities had can-

celled nuclear plants after the Three Mile Island accident and the demand for uranium, conversion, enrichment and fuel fabrication had dramatically contracted. The Department of Energy reacted to the loss of its European market to European competitors by offering a new contract to all of its uranium enrichment customers which allowed the utilities to purchase up to 30% of their uranium enrichment services from other utilities with cancelled plants and fixed commitment contracts for uranium enrichment services or from foreign competitors. Thus the utilities were able to reduce nuclear fuel costs by taking advantage of competition specifically encouraged by the Department of Energy in entering into the new Utility Services Contract.

It is this historical experience, in large degree driven by policy decisions of the U.S. Government and perturbations in the relevant markets caused by supply and demand—again often influenced by U.S. Government policies, that has led utilities to adopt procurement strategies that seek to minimize risk and price by diversification and control of each step of nuclear fuel procurement. Accordingly, utility procurement practices were not in any way driven by U.S. trade law, rather USEC has attempted to recreate history by re-characterizing the toll enrichment services step in the nuclear fuel procurement process as a purchase of a commodity in an attempt to monopolize a vital service to nuclear plant owners.

It is instructive that the utilities purchase enrichment services from USEC in the same manner as they purchase them from the respondents, and indeed purchased enrichment services from USEC and its predecessor, the Department of Energy, in this manner years

before they ever entered into any transactions with the respondents.

Significantly, the resulting nuclear fuel is consumed by the utilities in their nuclear power plants, and is not a component of any product that is later sold within the United States. Consequently, this is not an issue of identifying a different respondent, because there does not exist any appropriate respondent for sales of LEU imported pursuant to enrichment services contracts.

C. Including Sales Of Services Within The Scope Of The Investigations Would Be Directly Inconsistent With The WTO Antidumping Agreement And The General Agreement On Trade In Services

The WTO agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Antidumping Agreement") limits its application to sales of dumped *products*. Article 2 of the Antidumping Agreement provides that "a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported . . . is less than the comparable price . . . for the like product when destined for consumption in the exporting country." As is clear from the language of Article 2, the Antidumping Agreement requires that a finding of dumping must be limited to a comparison of the "export price" of the "product" with the "comparable price" for the "like product" in the home country. There is no ambiguity that the member governments may only consider sales of products in this regard.[42]

---

[42] The application of countervailing duties to sales of services would also be inconsistent with the WTO Agreement on Subsidies and Coun-

If there were any remaining question as to whether sales of enrichment constituted sales of a product or a service, the General Agreement on Trade and Services ("GATS") and the U.S. negotiating position on energy services have made clear that enrichment services are just that—

* * * * *

---

tervailing Measures.

[1]

BEFORE THE UNITED STATES DEPARTMENT OF COMMERCE INTERNATIONAL TRADE ADMINISTRATION HEARING

Nos. A-412-820; A-427-818, A-421-808, A-428-828, C-427-819, C-428-829, C-421-809 and C-412-821

PUBLIC DOCUMENT

IN THE MATTER OF LOW ENRICHED URANIUM FROM FRANCE, GERMANY, THE NETHERLANDS AND THE UNITED KINGDOM

Wednesday, October 31, 2001

The hearing was held at 10:00 a.m. in Room 3407 of the Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C., Bernard Carreau, Hearing Examiner, presiding.

DEPARTMENT OF COMMERCE:

BERNARD CARREAU
MELISSA SKINNER
DAVID MASON
WENDY FRANKEL
JONATHAN LYONS
HOWARD HURWITZ

* * * * *

[43] Back in the 1960s and '70s, when nuclear power plants were being constructed, the Department of Energy had a monopoly on enrichment in the United States. The Government felt the technology was sensitive, and they wanted to keep it to itself.

Utilities usually had to show they had an enrichment contract with the Department of Energy just to get licensing approval to build and operate a plant. It was how they showed the regulators that they would be capable of operating.

At the same time Department of Energy offered no other services. It wasn't selling U308, it wasn't selling EUP as a finished product, it wasn't selling fuel assemblies. So the utilities were on their own for everything except the enrichment service process.

The companies that were building the power plants, in particular Westinghouse, offered a solution that involved piggybacking on the utilities enrichment services contracts with DOE.

They would take care of procuring the U3O8 and getting it converted, then deliver the UF6 to DOE, [44] under the utilities enrichment contracts, pick it up after enrichment, and fabricate it into fuel assemblies, one stop shopping.

In the end, however, Westinghouse didn't do a very good job of managing the program. When the price of uranium shot up Westinghouse found that it didn't have sufficient supply available at the old prices to fulfill its contracts with the utilities for uranium.

It notified the utilities that it was going to breach its contracts on the basis of commercial impossibility. In other words, it didn't want to lose lots of money by having to buy uranium at the new, higher price.

As you might imagine this resulted in an enormous and very expensive controversy. It was eventually settled, but the utilities learned their lesson. They weren't going to put all their eggs in one basket again.

They became general cotransactions for the production of nuclear fuel assemblies. And they managed each step of the process themselves. [45] Accordingly, utilities typically enter into separate contracts with the mining companies that provide the uranium, the conversion service providers, the enrichment service providers, and the fabrication service providers.

Utilities developed their own methodologies for hedging against supply and price disruptions. They enter into both long-term contracts and spot contracts with multiple suppliers.

And it is important to note there are distinct markets for each step of the production process. And that the prices in those markets do not move in tandem.

In other words, sometimes the market price of uranium goes up, while at the same time the market price for SWUs is going down.

Utilities do their best to gauge these shifts and implement their procurement strategies in a manner in which they try to get the lowest overall costs and lower risks over the long term.

For example, if a utility happens to have a contract for uranium with a relatively low price, [46] and the

price it has to pay for SWUs is relatively high, the utility might choose to deliver more uranium and pay for less SWUs.

If the situation is the reverse, they might deliver less uranium and have more SWUs applied to it. The end result is the same, but the utility's overall costs may be quite different.

In recent years enrichers, specially USEC itself, have started offering sales of EUP. For those contracts the enricher takes on the responsibility of supplying the uranium, and the conversion service, as well as the enrichment service.

If the entire package is offered at a good price sometimes procuring some LEU through an EUP transaction fits into the utility's overall procurement strategies.

But we don't know of any utility that procures LEU exclusively through EUP contracts, or has any plans to. There is no circumvention here, no one has changed their behavior to get around anti-dumping or countervailing duty order.

Utilities have been procuring LEU this way

* * * * *

[57] respect to temporary importation. It is a fungible commodity. But because a fungible commodity is involved you can't properly take the provision of that commodity and its return following enrichment, as a payment in kind, which has never been the way that any player in this business has treated it.

It is not on our books, as has been established at verification. It is not on USEC's books as its material when it receives it from its customers. Rather USEC makes

very, very clear, that the uranium provided by its customers is the property of its customers.

And they make it so clear as to impose the property tax liability for the uranium on its customers. So to say that USEC or Eurodif, or I assume URENCO, has received a payment in kind, when it received uranium feed for enrichment, is simply a fiction, inconsistent with any books and records that have ever existed, or any books and records in the verified submissions in these cases.

Country of origin. That, too, was cited by the Department, that nobody disputes that the [58] origin of the material is where the enrichment takes place. I'm sorry, I dispute it. We dispute that vigorously.

And the Department, and all of the regulatory agencies would dispute it right along with me. There is a very clear tracking system which the Department, itself, has imposed that distinguishes between the country of enrichment, and the country or countries of origin of the uranium feed.

And that has existed from time immemorial, that is retained to this day. Every entry that has been looked at, every transaction that has been looked at, every piece of paper that has been looked at, shows the integrity of tracking the origin of the feed material, right down through the enrichment process, to the delivery of LEU, with a country of origin for enrichment, and a country, or countries of origin for the uranium feed.

Also with respect to country of origin, that runs over into substantial transformation. So what? We can talk about substantial transformation as long as we want.

* * * * *

[95]

* * * And like all the rest of the arguments that you've heard today, nothing but creative fiction, but fiction.

Now, let me just close with one point, which is in our reply brief, and which I hope you will focus on.

We hypothesize that instead of operating the way we do, we will actual tag and track the customer's uranium identically, the exact same thing, through the process.

We do nothing differently, except we do that. Actually, in URENCO's case we can, and do do that, with respect to reprocessed uranium.

Now, if we did all of that we would have no payment in kind possibility, we would have no fungibility question whatsoever. All we would be doing would be taking what the customer gives us, and enriching it, like polishing shoes, like a lot of other services that one could imagine.

If that were to come about, I would suggest to you, this entire edifice that has been constructed, rather creatively, on the other side, [96] just falls down and collapses.

Because by anybody's reckoning, including our wonderful dry cleaning analogy, this is a service. Now, can it really be that whether this is a service or not is affected, let alone controlled, by fungibility, by that difference?

I put it to you that that is inconceivable. And I also think, one final observation, what you are really being asked to do here, let's cut through it all, is stretch the anti-dumping law so that it creates a remedy for a service.

Now, that is an argument, if it is an argument, that ought to be presented not to the Department of Commerce, but to the Congress of the United States.

You can interpret, but you cannot make new law. You cannot provide a remedy for services, when that is not within your, that is not allowable under the statute. Congress must make that decision.

And in making that decision it must make it in the context of our international obligations, and our international negotiations * * * .

* * * * *

[141] HEARING OFFICER CARREAU: Thank you very much, everybody, for participating.

MR. CULP: I think I might be the only utility rep in the audience, here. On this issue of payment in kind, I represent Duke Power, Duke Energy. We purchase roughly ten percent of the LEU that comes into the United States, and it goes in seven nuclear power plants that we operate.

Over the course of this investigation, roughly 95 percent of the transactions that we entered into call for enrichment services contracts, they are not for EUPs. So a very small portion of the contracts that we enter into are for an EUP.

For those contracts that we negotiated, we did several of these contracts over this period of the investigation, and even prior to, that relate to enrichment services.

I can tell you that neither party, neither we as the utility, nor enrichment services providers, and that is not only USEC, but URENCO and COGEMA, under no

circumstances do any of those parties ever believed that the uranium that we supplied to be [142] enriched, as a service transaction, was a payment in kind.

We supply uranium, our own uranium, and hold title to that uranium throughout the process. We specify to the enrichers how we want that uranium to be enriched, which assays to enrich the product to, and what tails assay to apply to the services, and we receive the product back at the specifications that we provide.

MR. MASON: At this point I just want to make sure that there is a submission on the record with those facts?

MR. CULP: There is.

HEARING OFFICER CARREAU: Thank you very much, everybody.

(Whereupon, at 1:05 p.m. the above-entitled matter was concluded.)

[FOR OFFICIAL FILE]

UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for International Trade
Washington, D.C. 20230

[NOV 7 2001]

[A-427-818, A-428-828,]
[A-421-808, A-412-820,]
[C-427-819, C-428-829,]
[C-421-809, C-412-821]
[Investigation]
[Public Document]
[Group II/Office VI: DB]

M.P. Carl
Directorate-General for Trade
European Commission
Rue de la Loi, B-1049 Bruxelles
Wetstraat 200, B-1049
Brussels, Belgium

Dear Peter:

Thank you for your recent letter regarding the anti-dumping and countervailing duty petitions on low enriched uranium imported from France, Germany, the Netherlands, and the United Kingdom. I appreciate your expressions of sympathy in the wake of the tragic events of September 11, 2001, related in your letter and personally when we last met in Paris. As always, I look forward to our continued dialogue and cooperation.

On uranium, I recognize that the ongoing investigations raise a number of significant issues at the core of

antidumping and countervailing duty practices. I will ensure that your views will be thoroughly considered in the course of reaching a final determination in these cases. Toward that end, I wanted to respond substantively to the issues your letter raised.

Your letter first raised the possibility that the Department's antidumping and countervailing duty investigations covering Eurodif might result in "double-counting" if the margins were simply added together at the end of the process. I should begin by disposing of a procedural point—that issue was not addressed in our preliminary determinations because the respondents did not raise it on the record. That said, on the substance, my understanding of Article VI:5 of GATT 1994 is that it applies to those instances in which a WTO member imposes "anti-dumping or countervailing duties to compensate for the same situation of dumping or export subsidization." In this instance, the subsidy allegations relate to the alleged government purchase of low enriched uranium at above-market prices. Nothing in those allegations suggested that the subsidy implied in the governments' practices was contingent on exports and would not, it seems, fall within the scope of Article VI:5 literally read.

It would, in my view, be helpful to clarify how Article VI:5, if only by analogy, would or should constrain our actions in the instant case so that we could address that point in our final determinations. Indeed, respondents would be well advised to reduce the conceptual argument to specific suggestions as to how our current calculations or methodologies would result in the alleged double-counting. And, above all, they or their counsel should ensure that those suggestions are made on the

record in the proceeding, since the Department is bound by our statute and decisions of the courts to consider only those facts and legal arguments placed before us on the record in an agency proceeding.

The second point you raised suggested that we erred in initiating the cases because the United States Enrichment Corporation (USEC) provides a service, rather than producing a good, and should not, in your view, have standing to petition for relief under the dumping and countervailing duty laws. Again, I should begin with a procedural point. I understand that Faryar Shirzad, in his recent discussions with Gerard Depayre here in Washington, clarified the legal constraints on the Department's ability to address questions of standing once we initiate a case. We cannot, as a matter of law, revisit the issue of standing at this point.

I think it is nonetheless important to address the distinction you raised with respect to the nature of the processing that takes place abroad and whether what is produced constitutes a good or a service. I do so because it could prove relevant to the outcome of the case on the merits, rather than the question of standing which has already been decided. Indeed, under both U.S. law and the WTO Antidumping and Subsidies Agreements, the question of standing is confined solely to a determination whether the petitioning domestic industry produces a "like product." At the initiation stage, we provided the factual basis for our conclusion that USEC is the producer of low enriched uranium, regardless of the contractual arrangement between USEC and the utilities, by examining such factors as manufacturing operations, capital investment in production facilities, value-added processing, and employees dedicated to

manufacturing. By examining the same production-related activity of the utilities, we determined that the utilities could not be considered to be the producers of low enriched uranium, even in those arrangements where they provide the uranium feedstock to the enricher. Rather, we found that utilities are purchasers and industrial users of low enriched uranium. Your argument, in substance, runs to the separate question of what it is that enters the United States—whether it is the same good that left the United States or whether it has been subjected to sufficient processing and has been sufficiently advanced in value as to create a new and different article of commerce and confer a different country of origin for customs purposes. It strikes me that this issue is at the heart of the good v. service arguments that you put forth.

A bit of background may help explain why I reach that conclusion. An often obscured point about the nature of antidumping and countervailing duty cases, as is true of appeals from customs decisions generally, is that the cases proceed *in rem* (i.e., against the good as entered), rather than *in personam* (i.e., against the parties to the import transaction). The basis for that distinction lies in the fact that what is ultimately at issue is an assessment of duty against the goods, rather than a sanction against the parties. That distinction is particularly important here in light of the argument you raised, which implicitly raises the question of whether or not a good is entering the United States subject to duty or whether the good retains the character of a good exported from the United States which is simply being returned to our shores. Indeed, if your argument does not further that line of argument in trade terms, it is dif-

ficult to see how it would make any legal difference to the determinations in the case.

While the Department is not strictly speaking bound by the determinations of the Custom Service, they are relevant because they set the basic ground rules of trade that both European and U.S. importers and exporters must deal with and are set to provide as much certainty as possible precisely so that trade can flow. When a customs officer determines whether a duty applies, he or she must determine the classification and country of origin of the product. If the U.S. Customs officer considered the uranium in question to be of U.S. origin, it would appear to strengthen the argument that the European providers of enrichment services did nothing to advance the value of the product or otherwise create a new and different article of commerce. In other words, the Customs officer would, in effect, be determining that the processing abroad did not sufficiently alter the character of the product so as to confer French or Dutch origin, for example. That would clearly be the case if the French or Dutch firm were providing accounting, transportation, repackaging, or warehousing services.

On the other hand, if the Customs officer determines that the processing abroad does add value and does create a new and different article of commerce, that decision necessarily implies the conclusion that the processing is sufficient to confer a new country of origin. That would be true in the case of virtually everything that we would both recognize as manufacturing operations in other analogous areas, such as in metallurgy, where the finishing of a steel product might be regarded as a service, but is generally considered sufficient processing to

change the nature of the intermediate good so as to confer a different country of origin.

Indeed, if you extend the argument about goods versus services too far, you risk bending the existing trade rules beyond recognition. The weaving of yarn into cloth might be considered a mere service to the yarnmaker, despite the fact that to both the relevant industry and to customs officials the "service" involved is sufficient to confer an altogether different country of origin. You can imagine the effect on current textile and apparel arrangements if that argument were to prevail. In short, there would appear to be a sound reason for trying to reason through the argument about goods versus services to a conclusion that makes sense in trade terms given the broader implications for the trading system.

What I would suggest is that the respondents in this matter address the point expressly, rather than debating the question of standing, and provide the supporting evidence needed to sustain the underlying logic of their argument. And, I would suggest they should definitely take into account the degree to which their argument would or would not be consistent with the existing trade treatment of the processed uranium when it is processed in France and exported as a good of French origin to the United States even when that processing takes place subject to contract manufacturing between a U.S. utility and the French processor. I assure you that we will continue to examine this issue closely and will, of course, take into account in our final determinations any evidence that the respondents can provide with respect to the points your letter raises.

The third point in your letter was that our decision on the goods versus services issue seemed to conflict with the findings of the U.S. Court of Federal Claims in *Florida Power & Light Co., et al v. United States, No. 96-644-C (June 28, 2001)*. That is not legally the case, of course, because the court's decision is wholly inapposite to the determination before the Department. The claim before the court was brought under an entirely different statute, codified for different policy purposes, and involved a dispute over an entirely different matter—namely what, if any, financial liabilities the government could legally pass on to the customer. That said, it might help if respondents in the proceeding before us clarified how the court's decision should inform our judgment.

Assuming for purposes of argument that the decision may help define the nature of the contractual relations among the parties to a contract for enrichment services, the court simply did not reach the question of what bearing those contractual relationships might have on the determinations to be made by the Department. The Claims Court did not purport to define what, if any, effect the nature of the contract manufacturing relationships common in the industry would have on the nature of the product exported to the United States (i.e., whether the processing abroad was such that the uranium entering the United States amounted to nothing more than American goods returned, or instead was significant enough to result in a change of country of origin of the uranium before it was exported to the United States). What's more, closely read, the court's treatment of the issue tends to support the Department's determinations to date. The court did, after all, acknowledge that the processing resulted in a product that

was essentially different than the feedstocks that were used in the process regardless of the nature of the contractual relationships that led to the processing. That said, I will be interested to learn what respondents make out of the case and will consider carefully any arguments they are prepared to make on the basis of the Claims Court's decision.

The fourth point raised in your letter related to systemic implications of a finding suggesting that the government's purchases of goods or services from private sector sources might result in a subsidy to the seller of those services. In the abstract, there seems to be little doubt that overpayment for goods could result in a subsidy (i.e., a financial contribution by the government that results in a benefit to the recipient) in WTO terms. In every instance, a case brought on that basis will rise or fall on its facts. I assume that you are arguing by analogy to the claim that has often been raised in European circles to the effect that U.S. defense spending results in massive subsidies to the contractors employed by the Pentagon.

I should probably pause here to explain that, while in private practice, I had the opportunity to work extensively with a number of companies, both U.S. and foreign, on U.S. government contracts. Between the heavy overhead costs imposed on all government contractors simply to qualify for bidding, the recurring overhead costs that have been imposed by government regulations, and the effects of the Competition in Contracting Act and the actively used bid protest procedures, I would be very hard pressed to point to an instance where the U.S. government overpaid a contractor in any significant amount in recent years. It could be I do not

see the systemic risk in quite the same way as your letter suggests, or that I am not evaluating the risk for other U.S. programs adequately based on my limited personal experience. But, let me suggest this, I would be open to further clarification on the point, and I would certainly expect the parties to the proceeding to address those issues if they were raised on the record in the cases before us. In either event, I would look forward to further discussions with you on this point.

The last point in your letter that I can respond to on the substance relates to your concerns regarding the application of the "international consortia" provision in our statute with respect to Urenco. This is the first time that we have invoked this provision and I appreciate your thoughts on this issue. As you know, we found that, under the Treaty of Almelo, the three governments agreed to produce and sell low enriched uranium, and that each of the participating companies share research and development as well as the production and marketing of low enriched uranium. While I would agree that the fact pattern you describe is one potential scenario that might come under the rubric of the international consortia provision, our initial review of the statute and legislative history indicates that the facts in these cases also come under that provision. Parties have briefed the legal and factual basis of this preliminary decision extensively, and we will carefully review all comments prior to making any final determination.

As for the specific subsidies you identified, related to the unpaid portion of a contingent liability in the case of Germany and the unpaid portion of outstanding loans from the European Investment Bank to British Nuclear Fuels, I can only say that those determinations will flow

from the facts on the record. The financial agreements involved are complex, as I learned in previous work on behalf of clients in the energy industry. Our case analysts have only recently returned from on-site verifications, and I can only promise that we will carefully consider the verified information on the record, as well as the comments you raise and the comments raised by all other parties, prior to making a final determination.

In closing, let me reiterate my appreciation for your taking the time to reflect your comments in writing. I will make our correspondence a part of the record so that all of the parties to the proceeding can raise or rebut the points we have discussed as they deem appropriate or helpful to their respective cases, including the petitioners, the respondents, and the utilities that are a part of the contractual relationships involved here. Parties should contact the case managers if they would like to submit further argument and should do so quickly, as our statutory deadline is fast approaching. Let me also emphasize that I fully understand your responsibilities toward your companies and Member States and your need to discuss this matter in a more structured way. I appreciate the level of cooperation shown by the European companies. I understand that representatives of both our governments met recently in Geneva and had very productive discussions. I stand ready to consult at any time, and I very much appreciate the ongoing dialogue and fruitful discussions we have had on this matter.

As always, thank you for your thoughts. If you would like to discuss this, or any other matter further, please feel free to contact me at (202) 482-2867 at your convenience.

Sincerely,

/s/ [ILLEGIBLE]
GRANT D. ALDONAS

United States International Trade Commission
Low Enriched Uranium From France, Germany, the Netherlands, and the United Kingdom

Investigations Nos. 701-TA-409-412 (Final)
and 731-TA-909 (Final)

Washington, DC 20436

* * * * *

D. Domestic Industry

Section 771(4) of the Act defines the relevant industry as "the producers as a [w]hole of a domestic like product, or those producers whose collective output of a domestic like product constitutes the major proportion of that product."[11] In defining the domestic industry, the Commission's general practice has been to include in the industry all of the domestic production of the like product, whether toll-produced, captively consumed, or sold in the domestic merchant market.[12] Based on our like product determination, we determine that there is a single domestic industry consisting of the sole domestic producer of LEU, USEC.[13]

Most LEU is produced pursuant to arrangements in which utilities pay the enricher in cash for the enrich-

---

[11] 19 U.S.C. § 1677(4)(A).

[12] *See United States Steel Group v. United States*, 873 F. Supp, 673, 681-84 (Ct. Int'l Trade 1994), *aff'd*, 96 F.3d 1352 (Fed. Cir. 1996).

[13] We note that there is no issue in these investigations as to whether USEC should be excluded from the domestic industry pursuant to 19 U.S.C. § 1677(4)(B). USEC is neither related to an exporter or importer of subject merchandise nor is it an importer of the subject merchandise.

ment component of the LEU (measured in "separative work units" or "SWUs"), and deliver a quantity of natural UF_6 to the enricher equal to the amount of converted uranium deemed to be contained in the LEU. These transactions are referred to hereinafter as "SWU transactions" or "SWU sales." In addition, some LEU is sold in transactions where the customer pays an all-inclusive price for both natural UF_6 feedstock and the enrichment component.[14] These transactions are referred to hereinafter as "EUP transactions" or "EUP sales."

Respondents and AHUG argue that the Commission is precluded from conducting the analysis necessary for deciding whether to cumulate subject imports or for evaluating price effects, because foreign enrichers and USEC sell enrichment services and not LEU. We find these arguments unpersuasive. The statute instructs the Commission to cumulate "if such imports [of the subject merchandise] compete with each other and with domestic like products in the United States market."[15] In analyzing price effects, the Commission is instructed to "[evaluate] the effects of [the subject] merchandise on prices."[16] As noted above, Commerce has defined the subject merchandise to include all LEU entering the United States. Moreover, it is undisputed that LEU is a tangible product both when it is imported and when it is produced in the United States. Thus, contrary to Respondents' assertions, the Commission is required to make the evaluations relating to underselling and cumulation specified in the statute, as part of its injury analysis.

---

[14] Confidential Report ("CR") at I-13, Public Report ("PR") at I-10.

[15] 19 U.S.C. § 1677(7)(G)(i).

[16] 19 U.S.C. § 1677(7)(C)(ii).

Respondents and AHUG have not challenged the Commission's conclusion from the preliminary phase of the investigations that USEC and not the utilities is the domestic producer of LEU. Where foreign producers win enrichment contracts, it results in subject imports of LEU that may injure the U.S. production operations of the domestic producer USEC.

* * * * *

Response of the Ad Hoc Utilities Group to the Commerce Department's June 19, 2006 Redetermination Pursuant to Court Remand

Second, Commerce's proposed certification does not conform to industry practice. As both this Court and the Federal Circuit were aware, the fungible nature of uranium, the complex steps involved in processing it into uranium fuel, and the sensitivity, cost, and specialized equipment involved in physically transporting nuclear materials create certain ramifications for what happens in the performance of most enrichment services contracts. First and foremost, because LEU is a fungible product that requires particular care in transport, and because delivery by the enricher to the utility is ordinarily effected by a book transfer at the utility's designated fuel fabricator, imports of LEU frequently are not allocated to specific SWU contracts or orders prior to importation—or even at the time of entry.[18] Enrichers often make bulk shipments to U.S. fabricators to satisfy a number of contractual delivery requirements or to replenish physical stocks depleted through previous or imminent book transfers. The enriched uranium in those shipments is often not allocated on a cylinder-by-cylinder basis to specific SWU contracts or orders under a specific SWU contract. Instead, rather like an intra-bank transfer from one depositor to another, the SWU ordered by the utility is book transferred into each utility's account from the enricher's account at the fabricator on the delivery dates provided in the delivery orders

---

[18] *See* Final Remand Determination (June 23, 2003) at 68, JA3068; Response of USEC Inc. to the Department of Commerce's Remand Determination of June 23, 2003 (July 3, 2003) at 11-18, JA110019-110026.

under such SWU contracts.[19] The *Eurodif* decisions do not suggest that LEU imported pursuant to SWU transactions would be excluded from the antidumping duty law only if it matched up with specific orders under SWU contracts. Rather, the Federal Circuit, like this Court, focused on what was purchased and what was sold, issues unaffected by the fungibility of feed, SWU, or LEU.

* * * * *

[19] *See* Opening Brief of the Ad Hoc Utilities Group in Support of Motion for Judgment upon the Agency Record (Sept. 27, 2002) at 12, JA87026.

Comments Regarding the Department of Commerce Final Results of Redetermination Pursuant to Court Remand

* * * * *

Respondents note, however, that the Department's proposed scope exclusion contains extraneous items that could be misconstrued as going beyond those three essential elements:

- The proposed scope exclusion states that a SWU transaction requires that the "parties only contract for the provision of enrichment processing." Use of "only" is apparently intended to distinguish situations where the parties enter into a contract for the sale of LEU, *i.e.*, one where the utility enters into a transaction where it is purchasing LEU itself, without providing uranium feed.

  Respondents note, however, that in SWU transactions, utilities sometimes also purchase conversion or fabrication services from the enricher or an affiliate; the use of the word "only" could be misconstrued as precluding the application of the scope exclusion to these transactions, even though the customer has entered into a SWU transaction and provided its feed uranium for enrichment. Similarly, as the Department has recognized, SWU transactions frequently include such additional "incidentals" as sampling, cylinder rental, and cylinder cleaning.[5] The Remand Redetermination makes clear that Commerce did not intend that the inclusion of such incidentals

[5] Remand Redetermination at 7.

would place outside the scope exclusion a transaction that otherwise would qualify as a "SWU transaction." Any potential for misconstruction of the scope exclusion can best be avoided by deleting the word "only" from this phrase. The subject sentence accurately encompasses the guidance of the courts concerning what constitutes a SWU transaction without the word "only."

- The third sentence of the proposed scope exclusion states that at "no time, before, during or after enrichment, does the enricher own or hold title to the LEU product delivered."

  Use of the word "before" in this phrase makes no sense and should be deleted—it obviously is impossible for any entity to hold title to the LEU delivered to the customer "before" enrichment of the customer's uranium has occurred, because the LEU does not yet exist. Inclusion of the word "before" appears to be inadvertent, since paragraph 5 of the Department's proposed certification defines a SWU transaction as one where "[a]t no time during or after enrichment did Enricher own the Excluded Merchandise [*i.e.*, the LEU]."

- The next sentence of the proposed scope exclusion states that a SWU transaction "must be performed in accordance with the relevant terms of a written contract for the provision of SWU."

  Read in context, it is plain that the "relevant terms" are only those contained in the second and third sentences of the proposed scope exclusion, *i.e.*, those relating to the utility's purchasing the service of enrichment, and providing the feed uranium, in a transaction where the enricher does

not hold title to the LEU. To make any other terms of the enrichment contract "relevant terms" would not only inject uncertainty into the application of the scope exclusion, but would enable Commerce to constrict the scope exclusion in a manner not contemplated or authorized by this Court or the Federal Circuit. To avoid any ambiguity, the word "foregoing" should be inserted before "relevant terms" and any certification should be explicit as to what constitutes such relevant terms, as discussed below.

We urge this Court to resolve the above ambiguities, or to require the Department to do so, in the manner suggested above.

II. THE DEPARTMENT LACKS AUTHORITY TO ALTER THE FEDERAL CIRCUIT'S EXCLUSION OF SWU TRANSACTIONS FROM THE SCOPE OF THE LEU ORDER

In light of the Department's proposed scope exclusion that, in the main, properly implements the courts' intended definition of a SWU transaction, it is troubling that the Department suggests that it is free to alter this definition. It does so not only through repeated indications that it "respectfully disagrees" with the decisions of the Federal Circuit and this Court, but also through a claim that "Commerce may determine that it is necessary to provide additional clarification of the scope of this order to further define the meaning of 'SWU transaction' in accordance with *Eurodif I* and *II* and to modify the form of the required certification as circumstances warrant."[6]

---

[6] *Id.*

The Department acknowledges this Court's holding that the arguments raised by USEC concerning the factual performance of a SWU contract were of "no moment" to whether

* * * * *

to a SWU transaction. As the Department's certification states:

> 1. On _____, 200__, Utility placed an order for the purchase of separative work units ("SWU") with Enricher. Attached are (i) copy of the order issued by Utility; (ii) the contract for enrichment processing between Utility and Enricher pursuant to which the order was issued; and, (iii) any applicable certificate of the quantity and quality (CQQ) and any applicable nuclear material accountability document (*e.g.*, DOE/NRC 741) for the LEU being imported. These documents are labeled Attachment A, B, and C, respectively.
>
> 4. The following cylinders of the Excluded Merchandise are being imported pursuant to the purchase order:
>
> | Cylinder No. | Quantity | Assay |
> |---|---|---|

But as the Department knows full well, in order to save on delivery charges, and because there are relatively few vessels authorized or available to carry LEU, enrichers often make bulk shipments, which involve shipping LEU for the needs of multiple customers who have their fuel assemblies made by the same consignee/fabricator in one batch. Such deliveries may include LEU intended for the satisfaction of more than one customer within one or more cylinders. The LEU is actu-

ally delivered to a third party, the utilities' designated fabricator, which commingles the LEU within the amounts it holds for enrichers and utilities.[29] Bulk or batch shipments minimize costs and inefficiencies of shipping partially filled cylinders as well as shipment delays and bottlenecks due to the lack of cylinders. Improper and irrelevant certification requirements should not be allowed to scuttle operational efficiencies.

The Department's linkage requirement is irrelevant to the proper certification issue, which is only whether each cylinder is entering the United States pursuant to a SWU transaction. Certification that the importation is to fulfill a SWU transaction is sufficient, just as is the existing certification regarding LEU imported by foreign utilities for processing and re-export pursuant to a straightforward certification that an equivalent quantity of LEU (less processing losses) will be re-exported within eighteen months.

The manner in which this industry operates was explained to the Department in the investigation, and reiterated to the Department in the latest round of comments just before the issuance of Remand Redetermination.[30] Further, as explained above, the fact that uranium is treated as fungible by all participants in the nuclear fuel industry was well known to the Federal Circuit, which determined that this had no effect on what was sold. Accordingly, there is no basis for the Department to require the kind of physical linkage

---

[29] *See, e.g.*, Response of USEC Inc. to the Department of Commerce's Remand Determination of June 23, 2003 (July 3, 2003) ("USEC Remand Response") at 17, confirming the delivery of LEU to the customers' fabricator.

[30] *See infra* notes 31 and 32 and accompanying text.

it has proposed when it knows full well that that is not how the industry operates.

By contrast, paragraph 1 of Respondents' certification (which combines paragraphs 1 and 4 of the Department's certification) avoids these problems. Respondents proposal is the following certification language:

> 1. The following cylinders of LEU are being imported pursuant to a separative work unit ("SWU") contract(s) under while Enricher's customer(s) purchase(s) enrichment services from, and supply(ies) unenriched natural uranium to, Enricher for such enrichment ("SWU transactions"):
>
> Cylinder No. Quantity Assay

This paragraph would require the certification of the enricher that each of th cylinders being imported is entering pursuant to a SWU contract where the utility provides the uranium and pays for the service of enrichment.

* * * * *